

AN ACT

relating to the temporary exemption of certain tangible personal property related to data centers from the sales and use tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.359 to read as follows:

Sec. 151.359. PROPERTY USED IN CERTAIN DATA CENTERS; TEMPORARY EXEMPTION. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Data center" means at least 100,000 square feet of space in a single building or portion of a single building, which space:

(A) is located in this state;

(B) is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data;

(C) is used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) is not used primarily by a telecommunications

1 provider to place tangible personal property that is used to
2 deliver telecommunications services; and

3 (E) has an uninterruptible power source,
4 generator backup power, a sophisticated fire suppression and
5 prevention system, and enhanced physical security that includes
6 restricted access, video surveillance, and electronic systems.

7 (3) "Permanent job" means an employment position that
8 will exist for at least five years after the date the job is
9 created.

10 (4) "Qualifying data center" means a data center that
11 meets the qualifications prescribed by Subsection (d).

12 (5) "Qualifying job" means a full-time, permanent job
13 that pays at least 120 percent of the county average weekly wage in
14 the county in which the job is based.

15 (6) "Qualifying operator" means a person who controls
16 access to a qualifying data center, regardless of whether that
17 person owns each item of tangible personal property located at the
18 qualifying data center. A qualifying operator may also be the
19 qualifying owner.

20 (7) "Qualifying owner" means a person who owns the
21 building in which a qualifying data center is located. A qualifying
22 owner may also be the qualifying operator.

23 (8) "Qualifying occupant" means a person who:

24 (A) contracts with a qualifying owner or
25 qualifying operator to place, or cause to be placed, and to use
26 tangible personal property at the qualifying data center; or

27 (B) in the case of a qualifying occupant who is

1 also the qualifying owner and the qualifying operator, places or
2 causes to be placed, and uses tangible personal property at the
3 qualifying data center.

4 (b) Except as otherwise provided by this section, tangible
5 personal property that is necessary and essential to the operation
6 of a qualified data center is exempted from the taxes imposed by
7 this chapter if the tangible personal property is purchased for
8 installation at, incorporation into, or in the case of Subdivision
9 (1), use in a qualifying data center by a qualifying owner,
10 qualifying operator, or qualifying occupant, and the tangible
11 personal property is:

12 (1) electricity;

13 (2) an electrical system;

14 (3) a cooling system;

15 (4) an emergency generator;

16 (5) hardware or a distributed mainframe computer or
17 server;

18 (6) a data storage device;

19 (7) network connectivity equipment;

20 (8) a rack, cabinet, and raised floor system;

21 (9) a peripheral component or system;

22 (10) software;

23 (11) a mechanical, electrical, or plumbing system that
24 is necessary to operate any tangible personal property described by
25 Subdivisions (2)-(10);

26 (12) any other item of equipment or system necessary
27 to operate any tangible personal property described by Subdivisions

1 (2)-(11), including a fixture; and

2 (13) a component part of any tangible personal
3 property described by Subdivisions (2)-(10).

4 (c) The exemption provided by this section does not apply
5 to:

6 (1) office equipment or supplies;

7 (2) maintenance or janitorial supplies or equipment;

8 (3) equipment or supplies used primarily in sales
9 activities or transportation activities;

10 (4) tangible personal property on which the purchaser
11 has received or has a pending application for a refund under Section
12 151.429;

13 (5) tangible personal property not otherwise exempted
14 under Subsection (b) that is incorporated into real estate or into
15 an improvement of real estate;

16 (6) tangible personal property that is rented or
17 leased for a term of one year or less; or

18 (7) notwithstanding Section 151.3111, a taxable
19 service that is performed on tangible personal property exempted
20 under this section.

21 (d) Subject to Subsection (k), a data center may be
22 certified by the comptroller as a qualifying data center for
23 purposes of this section if, on or after September 1, 2013:

24 (1) a single qualifying occupant:

25 (A) contracts with a qualifying owner or
26 qualifying operator to lease space in which the qualifying occupant
27 will locate a data center; or

1 (B) occupies a space that was not previously used
2 as a data center in which the qualifying occupant will locate a data
3 center, in the case of a qualifying occupant who is also the
4 qualifying operator and the qualifying owner; and

5 (2) the qualifying owner, qualifying operator, or
6 qualifying occupant, jointly or independently:

7 (A) creates at least 20 qualifying jobs in the
8 county in which the data center is located, not including jobs moved
9 from one county in this state to another county in this state; and

10 (B) makes or agrees to make a capital investment,
11 on or after September 1, 2013, of at least \$200 million in that
12 particular data center over a five-year period beginning on the
13 date the data center is certified by the comptroller as a qualifying
14 data center.

15 (e) A data center that is eligible under Subsection (d) to
16 be certified by the comptroller as a qualified data center shall
17 apply to the comptroller for certification as a qualifying data
18 center and for issuance of a registration number or numbers by the
19 comptroller. The application must be made on a form prescribed by
20 the comptroller and include the information required by the
21 comptroller. The application must include the name and contact
22 information for the qualifying occupant and, if applicable, the
23 name and contact information for the qualifying owner and the
24 qualifying operator who will claim the exemption authorized under
25 this section. The application form must include a section for the
26 applicant to certify that the capital investment required by
27 Subsection (d)(2)(B) will be met independently or jointly by the

1 qualifying occupant, qualifying owner, or qualifying operator
2 within the time period prescribed by Subsection (d)(2)(B).

3 (f) The exemption provided by this section begins on the
4 date the data center is certified by the comptroller as a qualifying
5 data center and expires:

6 (1) on the 10th anniversary of that date, if the
7 qualifying occupant, qualifying owner, or qualifying operator
8 independently or jointly makes a capital investment of at least
9 \$200 million but less than \$250 million as provided by Subsection
10 (d)(2)(B); or

11 (2) on the 15th anniversary of that date, if the
12 qualifying occupant, qualifying owner, or qualifying operator
13 independently or jointly makes a capital investment of \$250 million
14 or more as provided by Subsection (d)(2)(B).

15 (g) Each person who is eligible to claim an exemption
16 authorized by this section must hold a registration number issued
17 by the comptroller. The registration number must be stated on the
18 exemption certificate provided by the purchaser to the seller of
19 tangible personal property eligible for the exemption.

20 (h) The comptroller shall revoke all registration numbers
21 issued in connection with a qualifying data center that the
22 comptroller determines does not meet the requirements prescribed by
23 Subsection (d). Each person who has the person's registration
24 number revoked by the comptroller is liable for taxes, including
25 penalty and interest from the date of purchase, imposed under this
26 chapter on purchases for which the person claimed an exemption
27 under this section, regardless of whether the purchase occurred

1 before the date the registration number was revoked.

2 (i) The comptroller shall adopt rules consistent with and
3 necessary to implement this section, including rules relating to:

4 (1) a qualifying data center, qualifying owner,
5 qualifying operator, and qualifying occupant;

6 (2) issuance and revocation of a registration number
7 required under this section; and

8 (3) reporting and other procedures necessary to ensure
9 that a qualifying data center, qualifying owner, qualifying
10 operator, and qualifying occupant comply with this section and
11 remain entitled to the exemption authorized by this section.

12 (j) The exemption in this section does not apply to the
13 taxes imposed under Chapter 321, 322, or 323.

14 (k) A data center is not eligible to receive an exemption
15 under this section if the data center is subject to an agreement
16 limiting the appraised value of the data center's property under
17 Subchapter B or C, Chapter 313.

18 SECTION 2. Sections 151.317(a), (b), and (d), Tax Code, are
19 amended to read as follows:

20 (a) Subject to Sections 151.359 and ~~[Section]~~ 151.1551 and
21 Subsection (d) of this section, gas and electricity are exempted
22 from the taxes imposed by this chapter when sold for:

23 (1) residential use;

24 (2) use in powering equipment exempt under Section
25 151.318 or 151.3185 by a person processing tangible personal
26 property for sale as tangible personal property, other than
27 preparation or storage of prepared food described by Section

1 151.314(c-2);

2 (3) use in lighting, cooling, and heating in the
3 manufacturing area during the actual manufacturing or processing of
4 tangible personal property for sale as tangible personal property,
5 other than preparation or storage of prepared food described by
6 Section 151.314(c-2);

7 (4) use directly in exploring for, producing, or
8 transporting, a material extracted from the earth;

9 (5) use in agriculture, including dairy or poultry
10 operations and pumping for farm or ranch irrigation;

11 (6) use directly in electrical processes, such as
12 electroplating, electrolysis, and cathodic protection;

13 (7) use directly in the off-wing processing, overhaul,
14 or repair of a jet turbine engine or its parts for a certificated or
15 licensed carrier of persons or property;

16 (8) use directly in providing, under contracts with or
17 on behalf of the United States government or foreign governments,
18 defense or national security-related electronics, classified
19 intelligence data processing and handling systems, or
20 defense-related platform modifications or upgrades;

21 (9) use directly by a data center that is certified by
22 the comptroller as a qualifying data center under Section 151.359
23 in the processing, storage, and distribution of data;

24 (10) [~~9~~] a direct or indirect use, consumption, or
25 loss of electricity by an electric utility engaged in the purchase
26 of electricity for resale; or

27 (11) [~~10~~] use in timber operations, including

1 pumping for irrigation of timberland.

2 (b) The sale, production, distribution, lease, or rental
3 of, and the use, storage, or other consumption in this state of, gas
4 and electricity sold for the uses listed in Subsection (a), are
5 exempted from the taxes imposed by a municipality under Chapter 321
6 except as provided by Sections 151.359(j) and [Section] 321.105.

7 (d) To qualify for the exemptions in Subsections (a)(2)-(9)
8 [~~(a)(2)-(8)~~], the gas or electricity must be sold to the person
9 using the gas or electricity in the exempt manner. For purposes of
10 this subsection, the use of gas or electricity in an exempt manner
11 by an independent contractor engaged by the purchaser of the gas or
12 electricity to perform one or more of the exempt activities
13 identified in Subsections (a)(2)-(9) [~~(a)(2)-(8)~~] is considered
14 use by the purchaser of the gas or electricity.

15 SECTION 3. Section 151.1551(a), Tax Code, is amended to
16 read as follows:

17 (a) This section applies to an exemption provided by:

18 (1) Sections 151.316(a)(6), (7), (8), (10), (11), and
19 (12);

20 (2) Section 151.316(b) for tangible personal property
21 used in the production of agricultural products for sale;

22 (3) Section 151.3162(b) for tangible personal
23 property used in the production of timber for sale;

24 (4) Sections 151.317(a)(5) and (11) [~~(10)~~] for
25 electricity used in agriculture or timber operations; and

26 (5) Section 151.3111 for services performed on
27 tangible personal property exempted under Section 151.316(a)(6),

1 (7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

2 SECTION 4. Subchapter A, Chapter 313, Tax Code, is amended
3 by adding Section 313.010 to read as follows:

4 Sec. 313.010. CERTAIN ENTITIES INELIGIBLE. An entity that
5 has been issued a registration number under Section 151.359 is not
6 eligible to receive a limitation on appraised value under this
7 chapter.

8 SECTION 5. Section 321.208, Tax Code, is amended to read as
9 follows:

10 Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions
11 provided by Subchapter H, Chapter 151, apply to the taxes
12 authorized by this chapter, except as provided by Sections
13 151.359(j) and [Section] 151.317(b).

14 SECTION 6. Section 323.207, Tax Code, is amended to read as
15 follows:

16 Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions
17 provided by Subchapter H, Chapter 151, apply to the taxes
18 authorized by this chapter, except as provided by Sections
19 151.359(j) and [Section] 151.317(b).

20 SECTION 7. The change in law made by this Act does not
21 affect tax liability accruing before the effective date of this
22 Act. That liability continues in effect as if this Act had not been
23 enacted, and the former law is continued in effect for the
24 collection of taxes due and for civil and criminal enforcement of
25 the liability for those taxes.

26 SECTION 8. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 1223 was passed by the House on May 9, 2013, by the following vote: Yeas 137, Nays 3, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1223 on May 24, 2013, by the following vote: Yeas 143, Nays 1, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1223 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 23, Nays 8.

Secretary of the Senate

APPROVED: _____

Date

Governor