

By: Deuell

S.B. No. 730

A BILL TO BE ENTITLED

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 151.357 to read as follows:

Sec. 151.357. 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 a facility:

(A) located in this state on or after September 1, 2013;

(B) composed of one or more buildings specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff;

(C) used or to be used primarily by a business engaged in:

(i) data processing, hosting, and related services described by industry code 518210 of the North American Industry Classification System;

1 (ii) an Internet activity described by
2 industry code 519130 of the North American Industry Classification
3 System; or

4 (iii) computer software publishing and
5 reproduction described by industry code 511210 of the North
6 American Industry Classification System; and

7 (D) that has an uninterruptible power source, a
8 generator, a sophisticated fire suppression and prevention system,
9 and enhanced physical security that includes restricted access,
10 permanent security guards, video surveillance, and electronic
11 systems.

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

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

17 (5) "Qualifying data center tenant" means a tenant who
18 contracts with a qualifying data center for at least 500 kilowatts
19 over a term of at least two years.

20 (6) "Qualifying job" means a full-time, permanent job
21 that pays at least 150 percent of the county average weekly wage in
22 the county in which the job is based.

23 (b) Except as otherwise provided by this section, beginning
24 on the date a data center or a data center tenant becomes a
25 qualifying data center or qualifying data center tenant and is
26 issued a registration number and ending on the 10th anniversary of
27 that date, the following items are exempted from the taxes imposed

1 by this chapter if sold, leased, or rented to a qualifying data
2 center or a qualifying data center tenant:

3 (1) tangible personal property necessary to manage or
4 operate the data center, including an electrical system, a cooling
5 or environmental control system, a generator, hardware or a
6 distributed mainframe computer or server, a data storage device,
7 and network connectivity equipment; and

8 (2) any component part of tangible personal property
9 described by Subdivision (1).

10 (c) This section does not apply to:

11 (1) office equipment or supplies; or

12 (2) equipment or supplies used in sales or
13 distribution activities or transportation activities.

14 (d) A data center is eligible to be a qualifying data center
15 for purposes of this section if, on or after September 1, 2013, the
16 data center:

17 (1) creates at least 25 qualifying jobs in the county
18 in which the data center is located; and

19 (2) certifies in writing to the comptroller that the
20 data center will invest at least \$150 million in the data center
21 facility over a five-year period beginning on the date the data
22 center becomes a qualifying data center.

23 (e) A data center may apply to the comptroller for
24 qualification as a qualifying data center and for issuance of a
25 registration number issued by the comptroller. The application
26 must be made on a form prescribed by the comptroller and include the
27 information required by the comptroller. The application may

1 include information relating to colocation tenants or a colocation
2 tenant may apply separately to the comptroller for qualification as
3 a qualifying colocation tenant and for issuance of a registration
4 number.

5 (f) A registration number issued under this section expires
6 on the 10th anniversary of the date of issuance, unless revoked at
7 an earlier time by the comptroller as provided by Subsection (h).

8 (g) To claim an exemption under this section, the
9 registration number issued by the comptroller must be stated on the
10 exemption certificate provided by the purchaser of the item.

11 (h) The comptroller shall revoke and may not reinstate:

12 (1) a registration number issued to a qualifying data
13 center if the data center fails to comply with the requirements
14 prescribed by Subsection (d); and

15 (2) a registration number issued to a qualifying data
16 center tenant if:

17 (A) the data center tenant no longer meets the
18 qualifications prescribed by Subsection (a)(5); or

19 (B) the comptroller revokes the registration
20 number of the qualifying data center with whom the data center
21 tenant contracts.

22 (i) A qualifying data center or a qualifying data center
23 tenant whose registration number is revoked for a reason specified
24 by Subsection (h) is liable for payment of the taxes imposed under
25 this chapter on the purchase price of each taxable item the data
26 center or data center tenant purchased and claimed an exemption for
27 under this section, regardless of whether the purchase occurred

1 before the date the registration number was revoked.

2 (j) The comptroller shall adopt rules necessary to
3 implement this section, including rules relating to the:

4 (1) qualification of a data center and a data center
5 tenant for the exemption under this section;

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

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

12 SECTION 2. The change in law made by this Act does not
13 affect tax liability accruing before the effective date of this
14 Act. That liability continues in effect as if this Act had not been
15 enacted, and the former law is continued in effect for the
16 collection of taxes due and for civil and criminal enforcement of
17 the liability for those taxes.

18 SECTION 3. This Act takes effect September 1, 2013.