

House Bill 1223
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 qualifying occupant for the processing, storage, and distribution of data;

(D) is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and

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

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

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

(5) "Qualifying job" means a full-time, permanent job that

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

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

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

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

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pays at least 120 percent of the county average weekly wage in the county in which the job is based.

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

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

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

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

(B) in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, places or causes to be placed, and uses tangible personal property at the qualifying data center.

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

(1) electricity;

(2) an electrical system;

(3) a cooling system;

(4) an emergency generator;

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

(6) a data storage device;

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

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

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

(B) in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, places or causes to be placed, and uses tangible personal property at the qualifying data center.

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- (7) network connectivity equipment;
- (8) a rack, cabinet, and raised floor system;
- (9) a peripheral component or system;
- (10) software;
- (11) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described by Subdivisions (2)-(10);
- (12) any other item of equipment or system necessary to operate any tangible personal property described by Subdivisions (2)-(11), including a fixture; and
- (13) a component part of any tangible personal property described by Subdivisions (2)-(10).
- (c) The exemption provided by this section does not apply to:
 - (1) office equipment or supplies;
 - (2) maintenance or janitorial supplies or equipment;
 - (3) equipment or supplies used primarily in sales activities or transportation activities;
 - (4) tangible personal property on which the purchaser has received or has a pending application for a refund under Section 151.429;
 - (5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;
 - (6) tangible personal property that is rented or leased for a term of one year or less; or
 - (7) notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under this section.
- (d) Subject to Subsection (k), a data center may be certified by the comptroller as a qualifying data center for purposes of this section if, on or after September 1, 2013:
 - (1) a single qualifying occupant;

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 - (7) notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under this section.
- (d) Subject to Subsection (k), a data center may be certified by the comptroller as a qualifying data center for purposes of this section if, on or after September 1, 2013:
 - (1) a single qualifying occupant;

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

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

(2) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently;

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

(B) makes or agrees to make a capital investment, on or after September 1, 2013, of at least \$150 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center.

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

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

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

(2) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently;

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

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

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

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period prescribed by Subsection (d)(2)(B).

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

(1) on the 10th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator independently or jointly makes a capital investment of at least \$150 million but less than \$200 million as provided by Subsection (d)(2)(B); or

(2) on the 15th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator independently or jointly makes a capital investment of \$200 million or more as provided by Subsection (d)(2)(B).

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

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

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

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period prescribed by Subsection (d)(2)(B).

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

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

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

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

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

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

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- (1) a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant;
- (2) issuance and revocation of a registration number required under this section; and
- (3) reporting and other procedures necessary to ensure that a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant comply with this section and remain entitled to the exemption authorized by this section.
- (j) The exemption in this section does not apply to the taxes imposed under Chapter 321, 322, or 323.
- (k) A data center is not eligible to receive an exemption under this section if the data center is subject to an agreement limiting the appraised value of the data center's property under Subchapter B or C, Chapter 313.

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

- (a) Subject to Sections 151.359 and [Section] 151.1551 and Subsection (d) of this section, gas and electricity are exempted from the taxes imposed by this chapter when sold for:
 - (1) residential use;
 - (2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);
 - (3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);

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- (1) a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant;
- (2) issuance and revocation of a registration number required under this section; and
- (3) reporting and other procedures necessary to ensure that a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant comply with this section and remain entitled to the exemption authorized by this section.
- (j) The exemption in this section does not apply to the taxes imposed under Chapter 321, 322, or 323.
- (k) A data center is not eligible to receive an exemption under this section if the data center is subject to an agreement limiting the appraised value of the data center's property under Subchapter B or C, Chapter 313.

SECTION 2. Same as House version.

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- (4) use directly in exploring for, producing, or transporting, a material extracted from the earth;
- (5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;
- (6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;
- (7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;
- (8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;
- (9) use directly by a data center that is certified by the comptroller as a qualifying data center under Section 151.359 in the processing, storage, and distribution of data;
- (10) ~~(9)~~ a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or
- (11) ~~(10)~~ use in timber operations, including pumping for irrigation of timberland.
- (b) The sale, production, distribution, lease, or rental of, and the use, storage, or other consumption in this state of, gas and electricity sold for the uses listed in Subsection (a), are exempted from the taxes imposed by a municipality under Chapter 321 except as provided by Sections 151.359(j) and [Section] 321.105.
- (d) To qualify for the exemptions in Subsections (a)(2)-(9) ~~(a)(2)-(8)~~, the gas or electricity must be sold to the person using the gas or electricity in the exempt manner. For purposes of this subsection, the use of gas or electricity in an

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exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the exempt activities identified in Subsections ~~(a)(2)-(8)~~ (a)(2)-(9) is considered use by the purchaser of the gas or electricity.

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

- (a) This section applies to an exemption provided by:
- (1) Sections 151.316(a)(6), (7), (8), (10), (11), and (12);
 - (2) Section 151.316(b) for tangible personal property used in the production of agricultural products for sale;
 - (3) Section 151.3162(b) for tangible personal property used in the production of timber for sale;
 - (4) Sections 151.317(a)(5) and (11) ~~[(10)]~~ for electricity used in agriculture or timber operations; and
 - (5) Section 151.3111 for services performed on tangible personal property exempted under Section 151.316(a)(6), (7), (8), (10), (11), or (12), 151.316(b), or 151.3162(b).

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

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

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

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SECTION 3. Same as House version.

SECTION 4. Same as House version.

SECTION 5. Same as House version.

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

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

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

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

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

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SECTION 6. Same as House version.

SECTION 7. Same as House version.

SECTION 8. Same as House version.

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