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H.B. No. 2096

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the temporary exemption of certain tangible personal
3 property related to certain multi-user data centers from the sales
4 and use tax.

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

6 SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended
7 by adding Section 151.3591 to read as follows:

8 Sec. 151.3591. PROPERTY USED IN CERTAIN MULTI-USER DATA
9 CENTERS; TEMPORARY EXEMPTION. (a) In this section:

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

15 (2) "Multi-user data center" means all or part of a new
16 or redeveloped facility that:

17 (A) is located in this state;

18 (B) is composed of a building or a series of
19 buildings and related improvements located on a parcel of land or on
20 parcels of land that are in close proximity to each other;

21 (C) is specifically constructed or refurbished,
22 repaired, restored, remodeled, or otherwise modified and actually
23 used primarily to house servers and related equipment and support
24 staff for the processing, storage, and distribution of data;

1 (D) is designed for use by one or more qualifying
2 occupants for the processing, storage, and distribution of data;

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

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

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

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

16 (5) "Qualifying multi-user data center" means a
17 multi-user data center that meets the qualifications prescribed by
18 Subsection (d).

19 (6) "Qualifying occupant" means a person who:

20 (A) contracts with a qualifying owner or
21 qualifying operator:

22 (i) for at least 1,000 kilowatts of
23 critical IT load capacity per month for a period of at least two
24 years; and

25 (ii) to place, or cause to be placed, and to
26 use tangible personal property at the qualifying multi-user data
27 center; or

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

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

10 (8) "Qualifying owner" means a person who owns the
11 building or buildings in which a qualifying multi-user data center
12 is located. A qualifying owner may also be the qualifying operator.

13 (b) Except as otherwise provided by this section, tangible
14 personal property that is necessary and essential to the operation
15 of a qualifying multi-user data center is exempted from the taxes
16 imposed by this chapter if the tangible personal property is
17 purchased for installation at, incorporation into, or in the case
18 of electricity, use in a qualifying multi-user data center by a
19 qualifying owner, qualifying operator, or qualifying occupant, and
20 the tangible personal property is:

21 (1) electricity;

22 (2) an electrical system;

23 (3) a cooling system;

24 (4) an emergency generator;

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

27 (6) a data storage device;

1 (7) network connectivity equipment;

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

3 (9) a peripheral component or system;

4 (10) software;

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

8 (12) any other item of equipment or system necessary
9 to operate any tangible personal property described by Subdivisions
10 (2)-(11), including a fixture; and

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

13 (c) The exemption provided by this section does not apply
14 to:

15 (1) office equipment or supplies;

16 (2) maintenance or janitorial supplies or equipment;

17 (3) equipment or supplies used primarily in sales
18 activities or transportation activities;

19 (4) tangible personal property on which the purchaser
20 has received or has a pending application for a refund under Section
21 [151.429](#);

22 (5) tangible personal property not otherwise exempted
23 under Subsection (b) that is incorporated into real estate or into
24 an improvement of real estate;

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

27 (7) notwithstanding Section [151.3111](#), a taxable

1 service that is performed on tangible personal property exempted
2 under this section.

3 (d) Subject to Subsection (1), a multi-user data center may
4 be certified by the comptroller as a qualifying multi-user data
5 center for purposes of this section if, on or after September 1,
6 2015, the qualifying owner, qualifying operator, or qualifying
7 occupants of the multi-user data center, independently or jointly:

8 (1) create at least five qualifying jobs in the county
9 in which the multi-user data center is located, not including jobs
10 moved from one county in this state to another county in this state;
11 and

12 (2) make or agree to make, on or after September 1,
13 2015, a capital investment if:

14 (A) the capital investment is at least \$100
15 million over a 10-year period beginning on the date the multi-user
16 data center is certified by the comptroller as a qualifying
17 multi-user data center;

18 (B) the capital investment is in a particular
19 multi-user data center; and

20 (C) the amount of the capital investment will
21 exclusively serve qualifying occupants that execute contracts on or
22 after September 1, 2015, and who were not under contract with the
23 qualified owner or qualified operator before September 1, 2015.

24 (e) A multi-user data center that is eligible under
25 Subsection (d) to be certified by the comptroller as a qualifying
26 multi-user data center shall apply to the comptroller for
27 certification and for the issuance of a registration number or

1 numbers by the comptroller. The application must be made on a form
2 prescribed by the comptroller and must include the information
3 required by the comptroller. The application must include the name
4 and contact information for each qualifying occupant, if any, as of
5 the date on which the application is filed with the comptroller, and
6 the name and contact information for the qualifying owner and, if
7 applicable, the qualifying operator who will claim the exemption
8 authorized under this section. The application form must include a
9 section for the applicant to certify that the capital investment
10 required by Subsection (d)(2) will be met independently or jointly
11 by the qualifying owner, qualifying operator, or qualifying
12 occupants within the time period prescribed by that subsection.

13 (f) A person who is not listed as a qualifying occupant on an
14 application filed under Subsection (e) may submit an application to
15 the comptroller for a registration number in relation to a
16 certified qualifying multi-user data center on a form prescribed by
17 the comptroller. The comptroller shall issue the registration
18 number to the applicant on receipt of information sufficient for
19 the comptroller to determine that the applicant is a qualifying
20 occupant of the certified qualifying multi-user data center.

21 (g) The exemption provided by this section begins on the
22 date the multi-user data center is certified by the comptroller as a
23 qualifying multi-user data center and expires:

24 (1) on the 10th anniversary of that date, if the
25 qualifying owner, qualifying operator, or qualifying occupants,
26 independently or jointly, make a capital investment of at least
27 \$100 million but less than \$150 million as provided by Subsection

1 (d)(2); or

2 (2) on the 15th anniversary of that date, if the
3 qualifying owner, qualifying operator, or qualifying occupants,
4 independently or jointly, make a capital investment of \$150 million
5 or more as provided by Subsection (d)(2).

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

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

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

22 (1) a qualifying multi-user data center, qualifying
23 owner, qualifying operator, and qualifying occupant;

24 (2) issuance and revocation of a registration number
25 required under this section; and

26 (3) reporting and other procedures necessary to ensure
27 that a qualifying multi-user data center, qualifying owner,

1 qualifying operator, and qualifying occupant comply with this
2 section and remain entitled to the exemption authorized by this
3 section.

4 (k) Except as provided by Section 321.211, the exemption
5 provided under this section does not apply to the taxes imposed
6 under Chapter 321, 322, or 323.

7 (l) A multi-user data center is not eligible to receive an
8 exemption under this section if the data center is subject to an
9 agreement limiting the appraised value of the data center's
10 property under Subchapter B or C, Chapter 313.

11 (m) A qualifying owner, qualifying operator, or qualifying
12 occupant of a qualifying multi-user data center may apply to the
13 comptroller for a refund of the taxes imposed by this chapter paid
14 on the purchase of an item of tangible personal property described
15 by Subsection (b) that occurred before the date the qualifying
16 multi-user data center is certified by the comptroller if the item
17 was purchased after the earlier of:

18 (1) the date the multi-user data center submits the
19 application described by Subsection (e); or

20 (2) the 180th day before the date the multi-user data
21 center is certified by the comptroller.

22 (n) Notwithstanding any other law, a data center that was
23 certified as a qualifying data center under Section 151.359 between
24 January 1, 2014, and December 31, 2014, and that otherwise meets the
25 qualifications for certification as a qualifying multi-user data
26 center prescribed by Subsection (d), may elect, on written notice
27 to the comptroller, to become a certified qualifying multi-user

1 data center subject to this section. Any capital investment made,
2 and any qualifying jobs created, by the certified qualifying data
3 center before the date the data center provides written notice to
4 the comptroller under this section shall be considered in
5 determining whether the data center meets the qualifications
6 prescribed by Subsection (d), regardless of whether the investment
7 was made, or the jobs created, before September 1, 2015. For
8 purposes of Subsections (g) and (m), the date on which a qualifying
9 data center was certified as a qualifying data center by the
10 comptroller under Section 151.359 is considered to be the date on
11 which the qualifying multi-user data center is certified as a
12 certified qualifying multi-user data center for purposes of this
13 section.

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

16 (a) Subject to Sections 151.1551, 151.359, and 151.3591
17 [~~151.1551~~] and Subsection (d) of this section, gas and electricity
18 are exempted from the taxes imposed by this chapter when sold for:

19 (1) residential use;

20 (2) use in powering equipment exempt under Section
21 151.318 or 151.3185 by a person processing tangible personal
22 property for sale as tangible personal property, other than
23 preparation or storage of prepared food described by Section
24 151.314(c-2);

25 (3) use in lighting, cooling, and heating in the
26 manufacturing area during the actual manufacturing or processing of
27 tangible personal property for sale as tangible personal property,

1 other than preparation or storage of prepared food described by
2 Section 151.314(c-2);

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

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

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

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

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

17 (9) use directly by a data center or multi-user data
18 center that is certified by the comptroller as a qualifying data
19 center under Section 151.359 or a qualifying multi-user data center
20 under Section 151.3591 in the processing, storage, and distribution
21 of data;

22 (10) a direct or indirect use, consumption, or loss of
23 electricity by an electric utility engaged in the purchase of
24 electricity for resale; or

25 (11) use in timber operations, including pumping for
26 irrigation of timberland.

27 (b) The sale, production, distribution, lease, or rental

1 of, and the use, storage, or other consumption in this state of, gas
2 and electricity sold for the uses listed in Subsection (a), are
3 exempted from the taxes imposed by a municipality under Chapter 321
4 except as provided by Sections 151.359(j), 151.3591(k), and
5 321.105.

6 SECTION 3. Section 313.010, Tax Code, as added by Chapter
7 1274 (H.B. 1223), Acts of the 83rd Legislature, Regular Session,
8 2013, is amended to read as follows:

9 Sec. 313.010. CERTAIN ENTITIES INELIGIBLE. An entity that
10 has been issued a registration number under Section 151.359 or
11 151.3591 is not eligible to receive a limitation on appraised value
12 under this chapter.

13 SECTION 4. Section 321.208, Tax Code, is amended to read as
14 follows:

15 Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions
16 provided by Subchapter H, Chapter 151, apply to the taxes
17 authorized by this chapter, except as provided by Sections
18 [~~151.359(j) and~~] 151.317(b), 151.359(j), and 151.3591(k), and
19 subject to Section 321.211.

20 SECTION 5. Subchapter C, Chapter 321, Tax Code, is amended
21 by adding Section 321.211 to read as follows:

22 Sec. 321.211. MULTI-USER DATA CENTER EXCEPTION. The
23 governing body of a municipality with a population of 35,000 or less
24 may by ordinance provide that the exemption provided by Section
25 151.3591 applies to the taxes imposed by the municipality under
26 this chapter.

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

1 follows:

2 Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions
3 provided by Subchapter H, Chapter 151, apply to the taxes
4 authorized by this chapter, except as provided by Sections
5 [~~151.359(j) and~~ 151.317(b), 151.359(j), and 151.3591(k)].

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

12 SECTION 8. Section 151.3591, Tax Code, as added by this Act,
13 applies only to:

14 (1) a multi-user data center that becomes a qualifying
15 multi-user data center on or after the effective date of this Act;

16 (2) an occupant of a multi-user data center that
17 becomes a qualifying occupant on or after the effective date of this
18 Act; or

19 (3) a certified qualifying data center under Section
20 151.359 that elects to become a certified qualifying multi-user
21 data center under Section 151.3591(n), Tax Code, as added by this
22 Act.

23 SECTION 9. This Act takes effect September 1, 2015.