

By: Button

H.B. No. 2096

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Sections 151.359(a)(2), (3), (5), (7), and (8), Tax Code, are amended to read as follows:

(2) "Data center" means all or part of a new or redeveloped facility that ~~[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 composed of one or more buildings and related improvements specifically constructed or refurbished, repaired, restored, remodeled, or otherwise modified and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data;

(C) is designed for use ~~[used]~~ by one or more ~~[a single]~~ qualifying occupants ~~[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

1 restricted access, video surveillance, and electronic systems.

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

5 (5) "Qualifying job" means a full-time, permanent job
6 that pays at least [~~120 percent of~~] the county average weekly wage
7 in the county in which the job is based.

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

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

12 (A) contracts with a qualifying owner or
13 qualifying operator:

14 (i) for at least one megawatt of critical IT
15 load per month for a period of at least two years; and

16 (ii) to place, or cause to be placed, and to
17 use tangible personal property at the qualifying data center; or

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

22 SECTION 2. Section [151.359](#), Tax Code, is amended by
23 amending Subsections (c), (d), (e), and (f) and adding Subsections
24 (e-1) and (l) to read as follows:

25 (c) The exemption provided by this section does not apply
26 to:

27 (1) office equipment or supplies;

1 (2) maintenance or janitorial supplies or equipment;

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

4 (4) tangible personal property on which the purchaser
5 has received or has a pending application for a refund under Section
6 [151.429](#);

7 (5) tangible personal property not otherwise exempted
8 under Subsection (b) that is incorporated into real estate or into
9 an improvement of real estate;

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

12 (7) notwithstanding Section [151.3111](#), a taxable
13 service that is performed on tangible personal property exempted
14 under this section, other than a charge for labor to install or
15 maintain tangible personal property described by Subsection (b)
16 that is separately itemized.

17 (d) Subject to Subsection (k), a data center may be
18 certified by the comptroller as a qualifying data center for
19 purposes of this section if, on or after September 1, 2013, [+

20 ~~[(1) a single qualifying occupant.~~

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

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

1 ~~[(2)]~~ the qualifying owner, qualifying operator, or
2 qualifying occupants of the data center ~~[occupant]~~, jointly or
3 independently:

4 (1) create ~~[(A) creates]~~ at least five ~~[20]~~
5 qualifying jobs in the county in which the data center is located,
6 not including jobs moved from one county in this state to another
7 county in this state; and

8 (2) make or agree ~~[(B) makes or agrees]~~ to make a
9 capital investment, on or after September 1, 2013, of at least \$100
10 ~~[\$200]~~ million in that particular data center over a five-year
11 period beginning on the date the data center is certified by the
12 comptroller as a qualifying data center.

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

1 qualifying owner, ~~[or]~~ qualifying operator, or qualifying
2 occupants within the time period prescribed by that subsection
3 ~~[Subsection (d)(2)(B)]~~.

4 (e-1) A person who is not listed as a qualifying occupant on
5 an application filed under Subsection (e) may submit an application
6 to the comptroller for a registration number in relation to a
7 certified qualifying data center on a form prescribed by the
8 comptroller. The comptroller shall issue the registration number
9 to the applicant on receipt of information sufficient for the
10 comptroller to determine that the applicant is a qualifying
11 occupant of the certified qualifying data center.

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

15 (1) on the 10th anniversary of that date, if the
16 qualifying owner, qualifying operator ~~[occupant, qualifying~~
17 ~~owner]~~, or qualifying occupants, ~~[operator]~~ independently or
18 jointly, make ~~[makes]~~ a capital investment of at least \$100 ~~[\$200]~~
19 million but less than \$150 ~~[\$250]~~ million as provided by Subsection
20 (d)(2) ~~[Subsection (d)(2)(B)]~~; or

21 (2) on the 15th anniversary of that date, if the
22 qualifying owner, qualifying operator ~~[occupant, qualifying~~
23 ~~owner]~~, or qualifying occupants, ~~[operator]~~ independently or
24 jointly, make ~~[makes]~~ a capital investment of \$150 ~~[\$250]~~ million
25 or more as provided by Subsection (d)(2) ~~[Subsection (d)(2)(B)]~~.

26 (1) A qualifying owner, qualifying operator, or qualifying
27 occupant of a qualifying data center may apply to the comptroller

1 for a refund of the taxes imposed by this chapter paid on the
2 purchase of an item of tangible personal property described by
3 Subsection (b) that occurred before the date the qualifying data
4 center is certified by the comptroller if the item was purchased
5 after the earlier of:

6 (1) the date the data center submits the application
7 described by Subsection (e); or

8 (2) the 180th day before the date the data center is
9 certified by the comptroller.

10 SECTION 3. The changes in law made by this Act apply to a
11 data center certified as a qualifying data center by the
12 comptroller of public accounts, regardless of whether the
13 certification occurred before, on, or after the effective date of
14 this Act.

15 SECTION 4. This Act takes effect September 1, 2015.