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H.B. No. 2712

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the temporary exemption of certain tangible personal  
3 property related to large data center projects from the sales and  
4 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 151.3595 to read as follows:

8 Sec. 151.3595. PROPERTY USED IN CERTAIN LARGE DATA CENTER  
9 PROJECTS; 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 large data center project  
14 creates a job used to qualify under this section.

15 (2) "Large data center project" means a project that:

16 (A) is located in this state;

17 (B) is composed of one or more buildings  
18 comprising at least 250,000 square feet of space located or to be  
19 located on a single parcel of land or on contiguous parcels of land  
20 that are commonly owned or owned by affiliation with the qualifying  
21 operator;

22 (C) is specifically constructed or refurbished  
23 and actually used primarily to house servers and related equipment  
24 and support staff for the processing, storage, and distribution of

1 data;

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

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

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

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

14 (4) "Qualifying job" means a full-time, permanent job  
15 that pays at least 120 percent of the county average weekly wage in  
16 the county in which the job is based. The term includes a new  
17 employment position staffed by a third-party employer if a written  
18 contract exists between the third-party employer and a qualifying  
19 owner, qualifying operator, or qualifying occupant that provides  
20 that the employment position is permanently assigned to an  
21 associated qualifying large data center project.

22 (5) "Qualifying large data center project" means a  
23 large data center project that meets the qualifications prescribed  
24 by Subsection (d).

25 (6) "Qualifying operator" means a person who controls  
26 access to a qualifying large data center project, regardless of  
27 whether that person owns each item of tangible personal property

1 located at the qualifying large data center project. A qualifying  
2 operator may also be the qualifying owner.

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

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

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

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

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

23 (1) electricity;

24 (2) an electrical system;

25 (3) a cooling system;

26 (4) an emergency generator;

27 (5) hardware or a distributed mainframe computer or

1 server;

2 (6) a data storage device;

3 (7) network connectivity equipment;

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

5 (9) a peripheral component or system;

6 (10) software;

7 (11) a mechanical, electrical, or plumbing system that

8 is necessary to operate any tangible personal property described by

9 Subdivisions (2)-(10);

10 (12) any other item of equipment or system necessary

11 to operate any tangible personal property described by Subdivisions

12 (2)-(11), including a fixture; and

13 (13) a component part of any tangible personal

14 property described by Subdivisions (2)-(10).

15 (c) The exemption provided by this section does not apply

16 to:

17 (1) office equipment or supplies;

18 (2) maintenance or janitorial supplies or equipment;

19 (3) equipment or supplies used primarily in sales

20 activities or transportation activities;

21 (4) tangible personal property on which the purchaser

22 has received or has a pending application for a refund under Section

23 [151.429](#);

24 (5) tangible personal property not otherwise exempted

25 under Subsection (b) that is incorporated into real estate or into

26 an improvement of real estate;

27 (6) tangible personal property that is rented or

1 leased for a term of one year or less; or

2 (7) notwithstanding Section 151.3111, a taxable  
3 service that is performed on tangible personal property exempted  
4 under this section.

5 (d) A large data center project may be certified by the  
6 comptroller as a qualifying large data center project for purposes  
7 of this section if, on or after June 1, 2015:

8 (1) a single qualifying occupant:

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

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

16 (2) the qualifying owner, qualifying operator, or  
17 qualifying occupant, independently or jointly:

18 (A) creates at least 40 qualifying jobs in the  
19 county in which the large data center project is located, not  
20 including jobs moved from one county in this state to another county  
21 in this state;

22 (B) on or after May 1, 2015, makes or agrees to  
23 make a capital investment of at least \$500 million in that  
24 particular large data center project, the amount of which may not  
25 include a capital investment to replace personal property  
26 previously placed in service in that large data center project,  
27 over a five-year period beginning on the earlier of:

1                   (i) the date the large data center project  
2 submits the application described by Subsection (e); or

3                   (ii) the date the large data center project  
4 is certified by the comptroller as a qualifying large data center  
5 project; and

6                   (C) agrees to contract for at least 20 megawatts  
7 of transmission capacity for operation of the large data center  
8 project.

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

24           (f) The exemption provided by this section begins on the  
25 date the large data center project is certified by the comptroller  
26 as a qualifying large data center project and expires on the 20th  
27 anniversary of that date, if the qualifying occupant, qualifying

1 owner, or qualifying operator, independently or jointly makes the  
2 capital investment of at least \$500 million as provided by  
3 Subsection (d)(2)(B).

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

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

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

20 (1) a qualifying large data center project, qualifying  
21 owner, qualifying operator, and qualifying occupant;

22 (2) issuance and revocation of a registration number  
23 required under this section; and

24 (3) reporting and other procedures necessary to ensure  
25 that a qualifying large data center project, qualifying owner,  
26 qualifying operator, and qualifying occupant comply with this  
27 section and remain entitled to the exemption authorized by this

1 section.

2 SECTION 2. Section 151.317(a), Tax Code, is amended to read  
3 as follows:

4 (a) Subject to Sections 151.1551, 151.359, and 151.3595  
5 [~~151.1551~~] and Subsection (d) of this section, gas and electricity  
6 are exempted from the taxes imposed by this chapter when sold for:

7 (1) residential use;

8 (2) use in powering equipment exempt under Section  
9 151.318 or 151.3185 by a person processing tangible personal  
10 property for sale as tangible personal property, other than  
11 preparation or storage of prepared food described by Section  
12 151.314(c-2);

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

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

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

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

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

27 (8) use directly in providing, under contracts with or



1 on behalf of the United States government or foreign governments,  
2 defense or national security-related electronics, classified  
3 intelligence data processing and handling systems, or  
4 defense-related platform modifications or upgrades;

5 (9) use directly by a data center or large data center  
6 project that is certified by the comptroller as a qualifying data  
7 center under Section 151.359 or a qualifying large data center  
8 project under Section 151.3595 in the processing, storage, and  
9 distribution of data;

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

13 (11) use in timber operations, including pumping for  
14 irrigation of timberland.

15 SECTION 3. The change in law made by this Act does not  
16 affect tax liability accruing before the effective date of this  
17 Act. That liability continues in effect as if this Act had not been  
18 enacted, and the former law is continued in effect for the  
19 collection of taxes due and for civil and criminal enforcement of  
20 the liability for those taxes.

21 SECTION 4. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2015.