

By: Geren

H.B. No. 2712

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to large data center projects 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 151.3595 to read as follows:

Sec. 151.3595. PROPERTY USED IN CERTAIN LARGE DATA CENTER PROJECTS; 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) "Large data center project" means a project comprised of a building or series of buildings located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of the with at least 250,000 square feet of space, 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;

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

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

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

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

13          (4) "Qualifying large data center project" means a  
14 data center that meets the qualifications prescribed by Subsection  
15 (d).

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

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

1 operator may also be the qualifying owner.

2 (7) "Qualifying owner" means a person who owns the  
3 building or buildings in which a qualifying large data center  
4 project is located. A qualifying owner may also be the qualifying  
5 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 qualified 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 Subdivision (1), use in a qualifying large data center project by  
21 a qualifying owner, qualifying operator, or qualifying occupant,  
22 and 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, jointly or independently:

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

21 (B) makes or agrees to make a capital investment,  
22 on or after May 1, 2015, of at least \$500 million in that particular  
23 large data center project over a five-year period beginning on the  
24 application submission date for certification by the comptroller as  
25 a qualifying large data center project or beginning on the date the  
26 data center is certified by the comptroller as a qualifying large  
27 data center project; and

1           (C) will contract for at least 20 megawatts of  
2 transmission capacity for operations of the large data center  
3 project.

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

20           (f) The exemption provided by this section begins on the  
21 date the large data center project is certified by the comptroller  
22 as a qualifying data center and expires on the 20th anniversary of  
23 that date, if the qualifying occupant, qualifying owner, or  
24 qualifying operator independently or jointly makes a capital  
25 investment of at least \$500 million or more as provided by  
26 Subsection (d)(2)(B).

27           (g) Each person who is eligible to claim an exemption

1 authorized by this section must hold a registration number issued  
2 by the comptroller. The registration number must be stated on the  
3 exemption certificate provided by the purchaser to the seller of  
4 tangible personal property eligible for the exemption.

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

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

16 (1) a qualifying large data center project, qualifying  
17 owner, qualifying operator, and qualifying occupant;

18 (2) issuance and revocation of a registration number  
19 required under this section; and

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

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

27 (a) Subject to Sections 151.359 and 151.1551 and Subsection

1 (d) of this section, gas and electricity are exempted from the taxes  
2 imposed by this chapter when sold for:

3 (1) residential use;

4 (2) use in powering equipment exempt under Section  
5 151.318 or 151.3185 by a person processing tangible personal  
6 property for sale as tangible personal property, other than  
7 preparation or storage of prepared food described by Section  
8 151.314(c-2);

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

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

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

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

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

23 (8) use directly in providing, under contracts with or  
24 on behalf of the United States government or foreign governments,  
25 defense or national security-related electronics, classified  
26 intelligence data processing and handling systems, or  
27 defense-related platform modifications or upgrades;



1           (9) use directly by a data center that is certified by  
2 the comptroller as a qualifying data center under Section 151.359  
3 or a qualifying large data center project under Section 151.3595 in  
4 the processing, storage, and distribution of data;

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

8           (11) use in timber operations, including pumping for  
9 irrigation of timberland.

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

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