

By: Bohac

H.B. No. 4376

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to certain colocation data centers 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 151.3596 to read as follows:

Sec. 151.3596. PROPERTY USED IN COLOCATION DATA CENTERS; TEMPORARY EXEMPTION. (a) In this section:

(1) "Colocation data center" means all or part of a new or redeveloped facility that:

(A) is located in this state;

(B) is composed of space in a building or a series of buildings and related improvements located or to be located on one or more parcels of land;

(C) is 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;

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

(E) has an uninterruptible power source or generator backup power and cooling systems, towers, and other temperature control infrastructure.

1 (2) "Qualifying colocation data center" means a
2 colocation data center that:

3 (A) meets the qualifications prescribed by
4 Subsection (d); and

5 (B) does not generate electricity for resale or
6 for use outside the colocation data center.

7 (3) "Qualifying operator" means a person who controls
8 access to a qualifying colocation data center, regardless of
9 whether that person owns each item of tangible personal property
10 located at the qualifying colocation data center.

11 (4) "Qualifying tenant" means a person who:

12 (A) contracts with a qualifying operator, for a
13 period of at least five years:

14 (i) for at least one megawatt of critical IT
15 load capacity per month beginning not later than the first
16 anniversary of the date the qualifying operator and qualifying
17 tenant enter into the contract; and

18 (ii) to place, or cause to be placed, and to
19 use tangible personal property at the qualifying colocation data
20 center; or

21 (B) in the case of a qualifying tenant who is also
22 the qualifying operator, places or causes to be placed and uses
23 tangible personal property at the qualifying colocation data
24 center.

25 (b) Except as otherwise provided by this section, tangible
26 personal property that is necessary and essential to the operation
27 of a qualifying colocation data center is exempted from the taxes

1 imposed by this chapter if the tangible personal property is
2 purchased for installation at, incorporation into, or in the case
3 of electricity, use in a qualifying colocation data center by a
4 qualifying operator or qualifying tenant, and the tangible personal
5 property is:

6 (1) electricity;

7 (2) an electrical system;

8 (3) a cooling system;

9 (4) an emergency generator;

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

12 (6) a data storage device;

13 (7) network connectivity equipment;

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

15 (9) a peripheral component or system;

16 (10) software;

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

20 (12) any other item of equipment or system necessary
21 to operate any tangible personal property described by Subdivisions
22 (2)-(11), including a fixture; and

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

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.

15 (d) A colocation data center may be certified by the
16 comptroller as a qualifying colocation data center for purposes of
17 this section if, on or after January 1, 2019:

18 (1) a qualifying tenant contracts with a qualifying
19 operator to lease space in which the qualifying tenant will locate a
20 colocation data center; and

21 (2) the qualifying operator and qualifying tenants,
22 independently or jointly:

23 (A) employ at least 500 people full time in this
24 state; and

25 (B) make or agree to make, on or after January 1,
26 2019, a capital investment of at least \$15 million in that
27 particular colocation data center over a three-year period

1 beginning on the date the colocation data center is certified by the
2 comptroller as a qualifying colocation data center.

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

19 (f) A person who is not listed as a qualifying tenant on an
20 application filed under Subsection (e) may submit an application to
21 the comptroller for a registration number in relation to a
22 certified qualifying colocation data center on a form prescribed by
23 the comptroller. The comptroller shall issue the registration
24 number to the applicant on receipt of information sufficient for
25 the comptroller to determine that the applicant is a qualifying
26 tenant of the certified qualifying colocation data center.

27 (g) The comptroller shall:

1 (1) act on an application submitted under Subsection
2 (e) or (f) not later than the 60th day after the date the
3 comptroller receives the application from the applicant; and

4 (2) issue the certification and registration number or
5 numbers to the applicant not later than the 14th day after the date
6 the comptroller approves the application.

7 (h) The exemption provided by this section begins on the
8 date the colocation data center is certified by the comptroller as a
9 qualifying colocation data center and expires:

10 (1) on the 10th anniversary of that date, if the
11 qualifying operator or qualifying tenants, independently or
12 jointly, make a capital investment of at least \$15 million but less
13 than \$50 million as provided by Subsection (d)(2)(B); or

14 (2) on the 15th anniversary of that date, if the
15 qualifying operator or qualifying tenants, independently or
16 jointly, make a capital investment of \$50 million or more as
17 provided by Subsection (d)(2)(B).

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

23 (j) The comptroller shall revoke all registration numbers
24 issued in connection with a qualifying colocation data center that
25 the comptroller determines does not meet the requirements
26 prescribed by Subsection (d). Each person who has the person's
27 registration number revoked by the comptroller is liable for taxes,

1 including penalty and interest from the date of purchase, imposed
2 under this chapter on purchases for which the person claimed an
3 exemption under this section, regardless of whether the purchase
4 occurred before the date the registration number was revoked.

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

7 (1) a qualifying colocation data center, qualifying
8 operator, and qualifying tenant;

9 (2) issuance and revocation of a registration number
10 required under this section; and

11 (3) reporting and other procedures necessary to ensure
12 that a qualifying colocation data center, qualifying operator, and
13 qualifying tenant comply with this section and remain entitled to
14 the exemption authorized by this section.

15 (l) The exemption provided under this section does not apply
16 to the taxes imposed under Chapter 321, 322, or 323.

17 (m) Information submitted to the comptroller in an
18 application under Subsection (e) or (f) is confidential and
19 excepted from the requirements of Section 552.021, Government Code.

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

22 (a) Subject to Sections 151.1551, 151.359, ~~and~~ 151.3595,
23 and 151.3596 and Subsection (d) of this section, gas and
24 electricity are exempted from the taxes imposed by this chapter
25 when sold for:

26 (1) residential use;

27 (2) use in powering equipment exempt under Section

1 151.318 or 151.3185 by a person processing tangible personal
2 property for sale as tangible personal property, other than
3 preparation or storage of prepared food described by Section
4 151.314(c-2);

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

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

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

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

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

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

24 (9) use directly by a data center, ~~or~~ large data
25 center project, or colocation data center that is certified by the
26 comptroller as a qualifying data center under Section 151.359, ~~or~~
27 a qualifying large data center project under Section 151.3595, or a

1 qualifying colocation data center under Section 151.3596 in the
2 processing, storage, and distribution of data;

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

6 (11) use in timber operations, including pumping for
7 irrigation of timberland.

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

14 SECTION 4. Section 151.3596, Tax Code, as added by this Act,
15 applies only to:

16 (1) a colocation data center that becomes a qualifying
17 colocation data center on or after the effective date of this Act;
18 or

19 (2) an operator or tenant of a colocation data center
20 that becomes a qualifying operator or a qualifying tenant on or
21 after the effective date of this Act.

22 SECTION 5. This Act takes effect September 1, 2019.