

By: Capriglione

H.B. No. 3236

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to certain colocation data centers from sales and use taxes.

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) if redeveloped, has not been previously used for the purpose specified by Paragraph (C);

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

(F) has an uninterruptible power source or

1 generator backup power and cooling systems, towers, and other
2 temperature control infrastructure; and

3 (G) does not generate electricity for resale or
4 for use outside the facility.

5 (2) "Operator" means a person who controls access to a
6 colocation data center, regardless of whether that person owns each
7 item of tangible personal property located at the colocation data
8 center.

9 (3) "Qualifying tenant" means a tenant who is
10 certified by the comptroller under Subsection (d).

11 (4) "Tenant" means a person who:

12 (A) contracts with an operator, for a period of
13 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 operator and tenant enter into the
17 contract; and

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

20 (B) is the operator and who places or causes to be
21 placed and uses tangible personal property at the colocation data
22 center.

23 (b) Except as otherwise provided by this section, tangible
24 personal property that is necessary and essential to the operation
25 of a colocation data center is exempted from the taxes imposed by
26 this chapter if the tangible personal property is purchased by a
27 qualifying tenant for installation at, incorporation into, or in

1 the case of electricity, use in a colocation data center, and the
2 tangible personal property is:

- 3 (1) electricity;
- 4 (2) an electrical system;
- 5 (3) a cooling system;
- 6 (4) an emergency generator;
- 7 (5) hardware or a distributed mainframe computer or
8 server;

- 9 (6) a data storage device;
- 10 (7) network connectivity equipment;
- 11 (8) a rack, cabinet, and raised floor system;
- 12 (9) a peripheral component or system;
- 13 (10) software;
- 14 (11) a mechanical, electrical, or plumbing system that
15 is necessary to operate any tangible personal property described by
16 Subdivisions (2)-(10);

17 (12) any other item of equipment or system necessary
18 to operate any tangible personal property described by Subdivisions
19 (2)-(11), including a fixture; and

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

22 (c) The exemption provided by this section does not apply
23 to:

- 24 (1) office equipment or supplies;
- 25 (2) maintenance or janitorial supplies or equipment;
- 26 (3) equipment or supplies used primarily in sales
27 activities or transportation activities;

1 (4) tangible personal property on which the purchaser
2 has received or has a pending application for a refund under Section
3 151.429;

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

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

9 (7) notwithstanding Section 151.3111, a taxable
10 service that is performed on tangible personal property exempted
11 under this section.

12 (d) A tenant may be certified by the comptroller as a
13 qualifying tenant for purposes of this section if:

14 (1) the tenant employs at least 500 people full time in
15 this state; and

16 (2) on or after January 1, 2021, the tenant:

17 (A) contracts with an operator or tenant, as
18 applicable, to lease space in a facility in which the tenant will
19 locate a colocation data center; and

20 (B) makes or agrees to make a capital investment
21 of at least \$15 million in the facility in which the colocation data
22 center will be located over a three-year period beginning on the
23 date the tenant is certified by the comptroller as a qualifying
24 tenant.

25 (e) A tenant that is eligible under Subsection (d) to be
26 certified by the comptroller as a qualifying tenant shall apply to
27 the comptroller for certification and for the issuance of a

1 registration number by the comptroller. The application must be
2 made on a form prescribed by the comptroller and must include the
3 information required by the comptroller. The application must
4 include the tenant's name and contact information and the address
5 of the colocation data center. The application form must include a
6 section for the tenant to certify that the tenant will meet the
7 capital investment required by Subsection (d)(2)(B) within the
8 period prescribed by that paragraph.

9 (f) The comptroller shall:

10 (1) act on an application submitted under Subsection
11 (e) not later than the 60th day after the date the comptroller
12 receives the application from the applicant; and

13 (2) issue the certification and registration number to
14 the applicant not later than the 14th day after the date the
15 comptroller approves the application.

16 (g) The exemption provided by this section begins as to a
17 qualifying tenant on the date the comptroller issues a registration
18 number to the qualifying tenant under Subsection (f) and expires:

19 (1) on the 10th anniversary of that date, if the
20 qualifying tenant makes a capital investment of at least \$15
21 million but less than \$50 million as provided by Subsection
22 (d)(2)(B); or

23 (2) on the 15th anniversary of that date, if the
24 qualifying tenant makes a capital investment of \$50 million or more
25 as provided by Subsection (d)(2)(B).

26 (h) Each qualifying tenant who is eligible to claim an
27 exemption authorized by this section must hold a registration

1 number issued by the comptroller. The registration number must be
2 stated on the exemption certificate provided by the tenant to the
3 seller of tangible personal property eligible for the exemption.

4 (i) The comptroller shall revoke a registration number
5 issued to a tenant if the comptroller determines that the tenant
6 does not meet the requirements prescribed by Subsection (d). Each
7 tenant who has the tenant's registration number revoked by the
8 comptroller is liable for taxes, including penalties and interest
9 from the date of purchase, imposed under this chapter on purchases
10 for which the tenant claimed an exemption under this section,
11 regardless of whether the purchase occurred before the date the
12 registration number was revoked.

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

15 (1) a colocation data center, operator, and qualifying
16 tenant;

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

19 (3) reporting and other procedures necessary to ensure
20 that a colocation data center, operator, and qualifying tenant
21 comply with this section and that the qualifying tenant remains
22 entitled to the exemption authorized by this section.

23 (k) The exemption provided under this section does not apply
24 to the taxes imposed under Chapter 321, 322, or 323.

25 (l) Information submitted to the comptroller in an
26 application under Subsection (e) is confidential and excepted from
27 the requirements of Section 552.021, Government Code.

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

3 (a) Subject to Sections 151.1551, 151.359, [~~and~~ 151.3595,
4 and 151.3596 and Subsection (d) of this section, gas and
5 electricity are exempted from the taxes imposed by this chapter
6 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 (9-a) use directly in the processing, storage, and
11 distribution of data by a tenant of a colocation data center who is
12 certified by the comptroller as a qualifying tenant under Section
13 151.3596;

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

17 (11) use in timber operations, including pumping for
18 irrigation of timberland.

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

25 SECTION 4. Section 151.3596, Tax Code, as added by this Act,
26 applies only to a qualifying tenant of a colocation data center who
27 becomes a qualifying tenant on or after the effective date of this

1 Act.

2 SECTION 5. This Act takes effect September 1, 2021.