

By: Anderson

H.B. No. 3104

Substitute the following for H.B. No. 3104:

By: Button

C.S.H.B. No. 3104

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the temporary exemption of certain tangible personal
3 property related to certain connected data center projects from
4 sales and use taxes.

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 151.3596 to read as follows:

8 Sec. 151.3596. PROPERTY USED IN CERTAIN CONNECTED DATA
9 CENTER PROJECTS; TEMPORARY EXEMPTION. (a) In this section:

10 (1) "Affiliated group" has the meaning assigned by
11 Section 171.0001.

12 (2) "Connected data center project" means a project
13 that:

14 (A) is located in this state;

15 (B) is composed of one or more buildings:

16 (i) comprising at least 250,000 square feet
17 of space;

18 (ii) located or to be located on contiguous
19 or noncontiguous parcels of land that are commonly owned, owned by
20 affiliation with the qualifying operator, or leased by a common
21 qualifying operator; and

22 (iii) connected to each other:

23 (a) by fiber and associated equipment
24 required for operating a fiber transmission network between data

1 center buildings and upstream Internet peering points for the sole
2 use of the qualifying occupant; and

3 (b) for the purpose of providing
4 redundancy and resiliency for the data center services provided in
5 each building;

6 (C) is specifically constructed or refurbished
7 and primarily used to house servers and related equipment and
8 support staff for the processing, storage, and distribution of
9 data;

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

12 (E) is not used primarily by a telecommunications
13 provider to place tangible personal property used to deliver
14 telecommunications services; and

15 (F) has an uninterruptible power source, backup
16 electricity generation system, fire suppression and prevention
17 system, and physical security that includes restricted access,
18 video surveillance, and electronic systems.

19 (3) "County average weekly wage" means the average
20 weekly wage in a county for all jobs during the most recent four
21 quarterly periods for which data is available, as computed by the
22 Texas Workforce Commission, at the time a connected data center
23 project creates a job used to qualify under this section. If the
24 connected data center project is located in more than one county,
25 the county average weekly wage for each county in which the project
26 is located may be calculated by averaging the county average weekly
27 wages of all counties in which the project is located.

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

4 (5) "Qualifying connected data center project" means a
5 connected data center project that meets the qualifications
6 prescribed by Subsection (d).

7 (6) "Qualifying job" means a full-time, permanent job
8 that pays at least 120 percent of the county average weekly wage in
9 the county in which the job is based. The term includes a new
10 employment position staffed by a third-party employer if a written
11 contract exists between the third-party employer and a qualifying
12 owner, qualifying operator, or qualifying occupant that provides
13 that the employment position is permanently assigned to an
14 associated qualifying connected data center project. The term does
15 not include a job that is moved from one county in this state to
16 another county in this state.

17 (7) "Qualifying occupant" means a person who contracts
18 with a qualifying owner or qualifying operator to place, or cause to
19 be placed, and to use tangible personal property at the qualifying
20 connected data center project or, in the case of a qualifying
21 occupant who is also the qualifying owner and the qualifying
22 operator, who places or causes to be placed and uses tangible
23 personal property at the qualifying connected data center project.
24 The term includes a member of the person's affiliated group.

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

1 located at the qualifying connected data center project. The term
2 includes a member of the person's affiliated group. A qualifying
3 operator may also be the qualifying owner.

4 (9) "Qualifying owner" means a person who owns one or
5 more buildings in which a qualifying connected data center project
6 is located. The term includes a member of the person's affiliated
7 group. A qualifying owner may also be the qualifying operator.

8 (b) Except as otherwise provided by this section, tangible
9 personal property that is necessary and essential to the operation
10 of a qualifying connected data center project is exempted from the
11 taxes imposed by this chapter if the tangible personal property is
12 purchased for installation at, incorporation into, or in the case
13 of electricity, use in a qualifying connected data center project
14 by a qualifying owner, qualifying operator, or qualifying occupant,
15 and the tangible personal property is:

- 16 (1) electricity;
- 17 (2) an electrical system;
- 18 (3) a cooling system;
- 19 (4) a backup electricity generation system;
- 20 (5) hardware or a distributed mainframe computer or
21 server;
- 22 (6) a data storage device;
- 23 (7) network connectivity equipment;
- 24 (8) a rack, cabinet, and raised floor system;
- 25 (9) a peripheral component or system;
- 26 (10) software;
- 27 (11) a mechanical, electrical, or plumbing system that

1 is necessary to operate any tangible personal property described by
2 Subdivisions (2)-(10);

3 (12) any other item of equipment or system necessary
4 to operate any tangible personal property described by Subdivisions
5 (2)-(11), including a fixture; and

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

8 (c) The exemption provided by this section does not apply
9 to:

10 (1) office equipment or supplies;

11 (2) maintenance or janitorial supplies or equipment;

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

14 (4) tangible personal property on which the purchaser
15 has received or has a pending application for a refund under Section
16 [151.429](#);

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

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

22 (7) notwithstanding Section [151.3111](#), a taxable
23 service that is performed on tangible personal property exempted
24 under this section.

25 (d) Subject to Subsection (j), a connected data center
26 project may be certified by the comptroller as a qualifying
27 connected data center project for purposes of this section if, on or

1 after September 1, 2023:

2 (1) a single qualifying occupant:

3 (A) contracts with a qualifying owner or
4 qualifying operator to lease space in which the qualifying occupant
5 will locate a connected data center project; or

6 (B) occupies a space that was not previously used
7 as a data center in which the qualifying occupant will locate a
8 connected data center project, in the case of a qualifying occupant
9 who is also the qualifying operator and the qualifying owner; and

10 (2) the qualifying owner, qualifying operator, or
11 qualifying occupant, jointly or independently:

12 (A) creates at least 40 qualifying jobs in the
13 county or counties in which the connected data center project is
14 located;

15 (B) makes or agrees to make a capital investment,
16 on or after September 1, 2023, of at least \$500 million in that
17 particular connected data center project, the amount of which may
18 not include a capital investment to replace personal property
19 previously placed in service in that connected data center project,
20 over a five-year period beginning on the earlier of:

21 (i) the date the connected data center
22 project submits the application described by Subsection (e); or

23 (ii) the date the connected data center
24 project is certified by the comptroller as a qualifying connected
25 data center project; and

26 (C) agrees to contract for at least 20 megawatts
27 of transmission capacity for the operation of the connected data

1 center project.

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

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

25 (g) Each person who is eligible to claim an exemption
26 authorized by this section must hold a registration number issued
27 by the comptroller. The registration number must be stated on the

1 exemption certificate provided by the purchaser to the seller of
2 tangible personal property eligible for the exemption.

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

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

15 (1) a qualifying connected data center project,
16 qualifying owner, qualifying operator, and qualifying occupant;

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

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

24 (j) A connected data center project is not eligible to
25 receive an exemption under this section if the connected data
26 center project is subject to an agreement limiting the appraised
27 value of the connected data center's property under former

1 Subchapter B or C, Chapter 313.

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 and 151.3596 and Subsection (d) of this section, gas and
6 electricity are exempted from the taxes imposed by this chapter
7 when sold for:

8 (1) residential use;

9 (2) use in powering equipment exempt under Section
10 151.318 or 151.3185 by a person processing tangible personal
11 property for sale as tangible personal property, other than
12 preparation or storage of prepared food described by Section
13 151.314(c-2);

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

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

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

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

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

1 (8) use directly in providing, under contracts with or
2 on behalf of the United States government or foreign governments,
3 defense or national security-related electronics, classified
4 intelligence data processing and handling systems, or
5 defense-related platform modifications or upgrades;

6 (9) use directly by a data center, ~~or~~ large data
7 center project, or connected data center project that is certified
8 by the comptroller as a qualifying data center under Section
9 [151.359](#), ~~or~~ a qualifying large data center project under Section
10 [151.3595](#), or a qualifying connected data center project under
11 Section 151.3596 in the processing, storage, and distribution of
12 data;

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

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

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

24 SECTION 4. This Act takes effect September 1, 2023.