

By: Paxton

S.B. No. 1143

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Chapter 151.359 Subsections (a) (b) (d) (e) and (f), Tax Code are amended to read as follows:

Sec. 151.359. PROPERTY USED IN CERTAIN DATA CENTERS; 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) "Data center" means at least 100,000 square feet of space in one or more buildings [~~a single building~~] located or to be located on a single parcel of land or on contiguous or noncontiguous parcels of land [~~or portion of a single building, 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;

(C) [~~is~~] used by one or more [~~a single~~]

1 qualifying occupants [~~occupant~~] for the processing, storage, and
2 distribution of data;

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

6 (E) has an uninterruptible power source,
7 [~~generator~~] backup electricity generation system [~~power~~], [~~a~~]
8 sophisticated fire suppression and prevention system, and enhanced
9 physical security that includes restricted access, video
10 surveillance, and electronic systems; and

11 (F) noncontiguous parcels must be located in the
12 same county or an adjacent county and connected by fiber and
13 associated equipment required for operating a fiber transmission
14 network between data center buildings or parcels and for the sole
15 use of the qualifying occupants or their agent(s).

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

19 (4) "Qualifying data center" means a data center that
20 meets the qualifications prescribed by Subsection (d).

21 (5) "Qualifying job" means a full-time, permanent job
22 that pays at least 120 percent of the county average weekly wage in
23 the county in which the data center position [~~job~~] is located
24 [~~based~~]. The term includes a new employment position staffed by a
25 third-party employer if a written contract exists between the
26 third-party employer and a qualifying owner, qualifying operator,
27 or qualifying occupant that provides that the employment position

1 is [~~permanently~~] assigned to an associated qualifying data center.

2 (6) "Qualifying operator" means a person who controls
3 access to a qualifying data center, regardless of whether that
4 person owns each item of tangible personal property located at the
5 qualifying data center. A qualifying operator may also be the
6 qualifying owner.

7 (7) "Qualifying owner" means a person who owns the
8 building or buildings in which a qualifying data center is located.
9 A qualifying owner may also be the qualifying operator.

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

11 (A) contracts with a qualifying owner or
12 qualifying operator to place, or cause to be placed, and to use
13 tangible personal property at the qualifying data center; or

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

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

26 (1) electricity;

27 (2) an electrical system;

- 1 (3) a cooling system;
- 2 (4) a backup electricity generation system [~~an~~
3 ~~emergency generator~~];
- 4 (5) hardware or a distributed mainframe computer or
5 server;
- 6 (6) a data storage device;
- 7 (7) network connectivity equipment;
- 8 (8) a rack, cabinet, and raised floor system;
- 9 (9) a peripheral component or system;
- 10 (10) software;
- 11 (11) a mechanical, electrical, or plumbing system that
12 is necessary to operate any tangible personal property described by
13 Subdivisions (2)-(10);
- 14 (12) any other item of equipment or system necessary
15 to operate any tangible personal property described by Subdivisions
16 (2)-(11), including a fixture; and
- 17 (13) a component part of any tangible personal
18 property described by Subdivisions (2)-(10).
- 19 (d) Subject to Subsection (k), a data center may be
20 certified by the comptroller as a qualifying data center for
21 purposes of this section if, on or after September 1, 2013:
- 22 (1) one or more [~~a single~~] qualifying occupants
23 [~~occupant~~]:
- 24 (A) contract [~~contracts~~] with a qualifying owner
25 or qualifying operator to lease or license via service agreement
26 space in which at least one [~~the~~] qualifying occupant will locate a
27 data center; [~~or~~]

1 (B) occupy [~~occupies~~] a space that was not
2 previously used as a data center in which at least one [~~the~~]
3 qualifying occupant will locate a data center [~~, in the case of a~~
4 ~~qualifying occupant who is also the qualifying operator and the~~
5 ~~qualifying owner~~]; or

6 (C) refurbish a space in which at least one
7 qualifying occupant will locate a data center; and

8 (2) the qualifying owner, qualifying operator, or
9 qualifying occupant or occupants, jointly or independently:

10 (A) create [~~creates~~] at least 20 qualifying jobs.
11 All qualifying jobs must be located in the county or counties in
12 which the data center is located. [~~, not including jobs~~] Jobs moved
13 from one county in this state to another county in this state may
14 not be included; and

15 (B) make [~~makes~~] or agree [~~agrees~~] to make a
16 capital investment, on or after September 1, 2013, of at least \$200
17 million in that particular data center over a five-year period
18 beginning on the date the data center is certified by the
19 comptroller as a qualifying data center.

20 (e) A data center that is eligible under Subsection (d) to
21 be certified by the comptroller as a qualified data center shall
22 apply to the comptroller for certification as a qualifying data
23 center and for issuance of a registration number or numbers by the
24 comptroller. The application must be made on a form prescribed by
25 the comptroller and include the information required by the
26 comptroller. The application must include the name and contact
27 information for the qualifying occupant and, if applicable, the

1 name and contact information for the qualifying owner and the
2 qualifying operator who will claim the exemption authorized under
3 this section. The application form must include a section for the
4 applicant to certify that the capital investment required by
5 Subsection (d)(2)(B) will be met independently or jointly by the
6 qualifying occupant or occupants, qualifying owner, or qualifying
7 operator within the time period prescribed by that subsection
8 [~~Subsection (d)(2)(B)~~].

9 (f) The exemption provided by this section begins on the
10 date the data center is certified by the comptroller as a qualifying
11 data center and expires:

12 (1) on the 10th anniversary of that date, if the
13 qualifying occupant or occupants, qualifying owner, or qualifying
14 operator independently or jointly makes a capital investment of at
15 least \$200 million but less than \$250 million as provided by
16 Subsection (d)(2)(B); or

17 (2) on the 15th anniversary of that date, if the
18 qualifying occupant or occupants, qualifying owner, or qualifying
19 operator independently or jointly makes a capital investment of
20 \$250 million or more as provided by Subsection (d)(2)(B).

21 SECTION 2. Subtitle H, Chapter 151.3595 Subsections (a) (b)
22 (d) (e) and (f), Tax Code are amended to read as follows:

23 Sec. 151.3595. PROPERTY USED IN CERTAIN LARGE DATA CENTER
24 PROJECTS; TEMPORARY EXEMPTION. (a) In this section:

25 (1) "County average weekly wage" means the average
26 weekly wage in a county for all jobs during the most recent four
27 quarterly periods for which data is available, as computed by the

1 Texas Workforce Commission, at the time a large data center project
2 creates a job used to qualify under this section.

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

4 (A) is located in this state;

5 (B) is composed of one or more buildings
6 comprising at least 250,000 square feet of space located or to be
7 located on one or more ~~[a single parcel of land or on]~~ contiguous or
8 noncontiguous parcels of land that are commonly owned or owned by
9 affiliation with the qualifying operator;

10 (C) is specifically constructed or refurbished
11 and actually used primarily to house servers and related equipment
12 and support staff for the processing, storage, and distribution of
13 data;

14 (D) is used by one or more ~~[a single]~~ qualifying
15 occupants or operators ~~[occupant]~~ for the processing, storage, and
16 distribution of data;

17 (E) is not used primarily by a telecommunications
18 provider to place tangible personal property used to deliver
19 telecommunications services; ~~and~~

20 (F) has an uninterruptible power source, ~~[a]~~
21 backup electricity generation system ~~[generator]~~, ~~[a]~~ fire
22 suppression and prevention system, and physical security that
23 includes restricted access, video surveillance, and electronic
24 systems; and

25 (G) may include noncontiguous parcels only if the
26 noncontiguous parcels are located in the same or adjacent county
27 and connected by fiber and associated equipment required for

1 operating a fiber transmission network between data center
2 buildings or parcels and for the sole use of the qualifying
3 occupants or their agent(s).

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

7 (4) "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 large data center project position [~~job~~] is
10 located [~~based~~]. The term includes a new employment position
11 staffed by a third-party employer if a written contract exists
12 between the third-party employer and a qualifying owner, qualifying
13 operator, or qualifying occupant that provides that the employment
14 position is [~~permanently~~] assigned to an associated qualifying
15 large data center project.

16 (5) "Qualifying large data center project" means a
17 large data center project that meets the qualifications prescribed
18 by Subsection (d).

19 (6) "Qualifying operator" means a person who controls
20 access to a qualifying large data center project, regardless of
21 whether that person owns each item of tangible personal property
22 located at the qualifying large data center project. A qualifying
23 operator may also be the qualifying owner.

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

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

1 (A) contracts with a qualifying owner or
2 qualifying operator to place, or cause to be placed, and to use
3 tangible personal property at the qualifying large data center
4 project; or

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

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

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

1 (10) software;

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

5 (12) any other item of equipment or system necessary
6 to operate any tangible personal property described by Subdivisions
7 (2)-(11), including a fixture; and

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

10 (d) Subject to Subsection (j), a large data center project
11 may be certified by the comptroller as a qualifying large data
12 center project for purposes of this section if, on or after June 1,
13 2015:

14 (1) one or more [~~a single~~] qualifying occupants
15 [~~occupant~~]:

16 (A) contract [~~contracts~~] with a qualifying owner
17 or qualifying operator to lease, license, or enter into a service
18 agreement for space in which at least one [~~the~~] qualifying occupant
19 will locate a large data center project; [~~or~~]

20 (B) occupy [~~occupies~~] a space that was not
21 previously used as a data center in which at least one [~~the~~]
22 qualifying occupant will locate a large data center project, if at
23 least one [~~in the case~~] of the [~~a~~] qualifying occupants [~~occupant~~
24 ~~who~~] is also the qualifying operator and the qualifying owner; or

25 (c) refurbishes a space in which at least one
26 qualifying occupant will locate a large data center project, if at
27 least one of the qualifying occupants is also the qualifying

1 operator and the qualifying owner; and

2 (2) the qualifying owner, qualifying operator, or
3 qualifying occupant or occupants, independently or jointly:

4 (A) create [~~creates~~] at least 40 qualifying jobs.
5 All jobs must be in the county or counties in which the large data
6 center project is located. [~~, not including jobs~~] Jobs moved from
7 one county in this state to another county in this state may not be
8 included;

9 (B) on or after May 1, 2015, make [~~makes~~] or agree
10 [~~agrees~~] to make a capital investment of at least \$500 million in
11 that particular large data center project, the amount of which may
12 not include a capital investment to replace personal property
13 previously placed in service in that large data center project,
14 over a five-year period beginning on the earlier of:

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

17 (ii) the date the large data center project
18 is certified by the comptroller as a qualifying large data center
19 project; and

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

23 (e) A large data center project that is eligible under
24 Subsection (d) to be certified by the comptroller as a qualifying
25 large data center project shall apply to the comptroller for
26 certification and for the issuance of a registration number or
27 numbers by the comptroller. The application must be made on a form

1 prescribed by the comptroller and must include the information
2 required by the comptroller. The application must include the name
3 and contact information for each ~~[the]~~ qualifying occupant, and, if
4 applicable, the name and contact information for the qualifying
5 owner and the qualifying operator who will claim the exemption
6 authorized under this section. The application form must include a
7 section for the applicant to certify that the capital investment
8 required by Subsection (d)(2)(B) will be met independently or
9 jointly by the qualifying occupant or occupants, qualifying owner,
10 or qualifying operator within the time period prescribed by that
11 subsection [~~Subsection (d)(2)(B)~~].

12 (f) The exemption provided by this section begins on the
13 date the large data center project is certified by the comptroller
14 as a qualifying large data center project and expires on the 20th
15 anniversary of that date, if the qualifying occupant or occupants,
16 qualifying owner, or qualifying operator, independently or jointly
17 makes the capital investment of at least \$500 million as provided by
18 Subsection (d)(2)(B).

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. This Act takes effect September 1, 2023.