
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2407 Session of
2014

INTRODUCED BY STEVENSON, THOMAS, LUCAS, SCHREIBER, HARHART AND
FLECK, JULY 1, 2014

REFERRED TO COMMITTEE ON FINANCE, JULY 1, 2014

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," providing for a computer data center equipment
11 incentive program.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XXIX-D

18 COMPUTER DATA CENTER EQUIPMENT INCENTIVE PROGRAM

19 Section 2901-D. Definitions.

20 The following words and phrases when used in this article
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

1 "Colocation tenant." An entity that contracts with the owner
2 or operator of a computer data center to use or occupy part of
3 the computer data center.

4 "Computer data center." All or part of a facility that may
5 be composed of multiple businesses or owners and no fewer than
6 five colocation tenants, that is or will be predominantly used
7 to house working servers and that may have uninterruptible
8 energy supply or generator backup power, or both, cooling
9 systems, towers and other temperature control infrastructure.

10 "Computer data center equipment." Equipment that is used to
11 outfit, operate or benefit a computer data center and component
12 parts, installations, refreshments, replacements and upgrades to
13 the equipment, whether any of the equipment is affixed to or
14 incorporated into real property, including:

15 (1) All equipment necessary for the transformation,
16 generation, distribution or management of electricity that is
17 required to operate computer server equipment, including
18 generators, uninterruptible energy supplies, conduit, gaseous
19 fuel piping, cabling, duct banks, switches, switchboards,
20 batteries and testing equipment.

21 (2) All equipment necessary to cool and maintain a
22 controlled environment for the operation of the computer
23 servers and other components of the computer data center,
24 including mechanical equipment, refrigerant piping, gaseous
25 fuel piping, adiabatic and free cooling systems, cooling
26 towers, water softeners, air handling units, indoor direct
27 exchange units, fans, ducting and filters.

28 (3) All water conservation systems, including facilities
29 or mechanisms that are designed to collect, conserve and
30 reuse water.

1 (4) All enabling software, computer server equipment,
2 chassis, networking equipment, switches, racks, cabling,
3 trays and conduit.

4 (5) All monitoring equipment and security systems.

5 (6) Modular data centers and preassembled components of
6 any item described in this paragraph, including components
7 used in the manufacturing of modular data centers.

8 (7) Other tangible personal property that is essential
9 to the operations of a computer data center.

10 "Department." The Department of Revenue of the Commonwealth.

11 "Existing computer data center." A computer data center in
12 operation prior to January 1, 2014.

13 "Facility." One or more parcels of land in this Commonwealth
14 and any structures and personal property contained on the land.

15 "New computer data center." A computer data center that
16 first commences operation on or after January 1, 2014.

17 "New investment." Construction, expansion or build out of
18 data center space at either a new computer data center or an
19 existing computer data center on or after January 1, 2014, and
20 the purchase and installation of computer data center equipment.

21 "Owner or operator." Includes a single entity and multiple
22 or affiliated entities.

23 "Qualification period." As follows:

24 (1) With respect to the owner or operator of a computer
25 data center certified under this article, a period of time
26 beginning on the date of certification of the computer data
27 center and expiring at the end of the fifteenth full calendar
28 year following the calendar year in which the owner or
29 operator filed the form for certification.

30 (2) With respect to a qualified colocation tenant of the

1 owner or operator of a computer data center certified under
2 this article, a period of time beginning on the date that the
3 qualified colocation tenant enters into an agreement
4 concerning the use or occupancy of the computer data center
5 and expiring at the earlier of the expiration of the term of
6 the agreement or the end of the tenth full calendar year
7 following the calendar year in which the qualified colocation
8 tenant enters into the agreement.

9 "Qualified colocation tenant." An entity that contracts with
10 the owner or operator of a computer data center that is
11 certified pursuant to this article to use or occupy part of the
12 computer data center for at least 100 kilowatts per month for
13 two or more years.

14 "Tax exemption." The tax exemption provided for under this
15 article.

16 "Telecommunications provider." A provider of
17 telecommunications services, as defined in 61 Pa. Code § 60.20
18 (relating to telecommunications service).
19 Section 2902-D. Sales and use tax exemption.

20 (a) State sales and use tax.--The tax imposed by section 202
21 shall not be imposed upon the sale at retail or use of computer
22 data center equipment for installation in a computer data
23 center, purchased by:

24 (1) An owner or operator of a computer data center
25 certified under this article.

26 (2) A qualified colocation tenant of a new computer data
27 center certified under this article.

28 (b) Local sales and use tax.--The sale at retail or use of
29 computer data center equipment for installation in a computer
30 data center shall be exempt from a city or county tax on

1 purchase price authorized under Article XXXI-B of the act of
2 July 28, 1953 (P.L.723, No.230), known as the Second Class
3 County Code, and the act of June 5, 1991 (P.L.9, No.6), known as
4 the Pennsylvania Intergovernmental Cooperation Authority Act for
5 Cities of the First Class, if purchased by:

6 (1) An owner or operator of a computer data center
7 certified under this article.

8 (2) A qualified colocation tenant of a new computer data
9 center certified under this article.

10 (c) Restriction.--Telecommunications providers are not
11 eligible for a tax exemption under this article.

12 (d) Applicability.--A tax exemption shall apply during the
13 qualification period.

14 Section 2903-D. Application.

15 To be considered for a tax exemption, an owner or operator of
16 a computer data center shall submit to the department an
17 application on a form prescribed by the department that includes
18 the following:

19 (1) The owner's or operator's name, address and
20 telephone number.

21 (2) The address of the site where the facility is or
22 will be located, including, if applicable, information
23 sufficient to identify the specific portion or portions of
24 the facility comprising the computer data center.

25 (3) If the computer data center is to qualify under
26 section 2906-D(1), the following:

27 (i) The anticipated investment associated with the
28 computer data center for which the tax exemption is being
29 sought.

30 (ii) An affirmation, signed by an authorized

1 executive representing the owner or operator, that the
2 computer data center is expected to satisfy the
3 certification requirements prescribed in section 2906-
4 D(1) and that the computer data center will not be used
5 in violation of section 2913-D.

6 (4) If the computer data center is to qualify under
7 section 2906-D(2), an affirmation, signed by an authorized
8 executive representing the owner or operator, that the
9 computer data center has satisfied, or will satisfy, the
10 certification requirements prescribed in section 2906-D(2)
11 and that the computer data center will not be used in
12 violation of section 2913-D.

13 Section 2904-D. Review of application.

14 (a) General rule.--Within 60 days after receiving a complete
15 and correct application, the department shall review the
16 application and either issue a written certification that the
17 computer data center qualifies for the tax exemption or provide
18 written reasons for its denial.

19 (b) Deemed approval.--Failure of the department to approve
20 or deny an application within 60 days after the date the owner
21 or operator of a computer data center submits the application to
22 the department constitutes certification of the computer data
23 center, and the department shall issue written certification to
24 the owner or operator within 14 days. The department may not
25 certify any new computer data center after December 31, 2029.

26 Section 2905-D. Separation of facilities.

27 (a) Separate certification.--An owner or operator of a
28 computer data center may separate a facility into one or more
29 computer data centers, which may each receive a separate
30 certification, if each computer data center individually meets

1 the requirements prescribed in section 2906-D.

2 (b) Limitation.--A portion of a facility or an article of
3 computer data equipment shall not be deemed to be a part of more
4 than one computer data center.

5 (c) Aggregation.--An owner or operator may aggregate one or
6 more parcels, buildings or condominiums in a facility into a
7 single computer data center if, in the aggregate, the parcels,
8 buildings and condominiums meet the requirements of this
9 article.

10 Section 2906-D. Eligibility requirements.

11 A computer data center must meet one of the following
12 requirements, after taking into account the combined investments
13 made and annual compensation paid by the owner or operator of a
14 computer data center or a qualified colocation tenant:

15 (1) On or before the fourth anniversary of
16 certification, the computer data center creates a minimum
17 investment of at least:

18 (i) twenty-five million dollars of new investment,
19 including costs of buildings and computer data center
20 equipment, if the computer data center is located in a
21 county with a population of 250,000 or fewer individuals;
22 or

23 (ii) fifty million dollars of new investment,
24 including costs of buildings and computer data center
25 equipment, if the computer data center is located in a
26 county with a population of more than 250,000
27 individuals.

28 (2) On or before the fourth anniversary of
29 certification, one or more taxpayers operating or occupying a
30 data center, in the aggregate, pay annual compensation of at

1 least \$1,000,000 to employees at the certified computer data
2 center site for each year of the certification.

3 Section 2907-D. Notification.

4 (a) Requirements satisfied.--On or before the fourth
5 anniversary of the certification of a new computer data center,
6 the owner or operator of a computer data center shall notify the
7 department in writing whether the computer data center for which
8 the certification is requested has satisfied the requirements
9 prescribed in section 2906-D.

10 (b) Records.--Until a new computer data center satisfies the
11 requirements prescribed in section 2906-D, the owner, operator
12 and qualified colocation tenants shall maintain detailed records
13 of all investment created by the new computer data center,
14 including costs of buildings and computer data center equipment,
15 and all tax exemption directly received by the owner, operator
16 or qualified colocation tenant.

17 Section 2908-D. Revocation of certification.

18 (a) Revocation.--If the department determines that the
19 requirements of section 2906-D have not been satisfied or that
20 there has been a violation of section 2913-D, the department may
21 revoke the certification of a new computer data center.

22 (b) Appeal.--The owner or operator of the new computer data
23 center may appeal the revocation. Appeals filed under this
24 section shall be governed by Article II.

25 (c) Recapture.--If certification is revoked pursuant to this
26 section, the qualification period of any owner, operator or
27 qualified colocation tenant of the new computer data center
28 expires, and the department may recapture from the owner,
29 operator or qualified colocation tenant all or part of the tax
30 exemption provided directly to the owner or operator. The

1 department may give special consideration or allow a temporary
2 exemption from recapture of the tax exemption if there is
3 extraordinary hardship due to factors beyond the control of the
4 owner or operator. The department may require the owner or
5 operator to file appropriate amended tax returns to reflect any
6 recapture of the tax exemption.

7 Section 2909-D. Regulations.

8 The department shall promulgate regulations and prescribe
9 forms and procedures as necessary for the purposes of this
10 article.

11 Section 2910-D. Confidential information.

12 Proprietary business information contained in the application
13 form described in section 2903-D and the written notice
14 described in 2907-D, as well as information concerning the
15 identity of a qualified colocation tenant, are confidential and
16 may not be disclosed to the public. The department may disclose
17 the name of a computer data center that has been certified under
18 this article.

19 Section 2911-D. List of colocation tenants.

20 An owner or operator of a computer data center shall provide
21 the department with a list of qualified colocation tenants,
22 including the commencement and expiration dates of each
23 qualified colocation tenant's agreement to use or occupy part of
24 the computer data center, and shall notify the department within
25 30 days of any change to the list.

26 Section 2912-D. Sale or transfer.

27 Except as provided in 2908-D, a computer data center retains
28 its certification regardless of a transfer, sale or other
29 disposition, directly or indirectly, of the computer data
30 center.

1 Section 2913-D. Limitations.

2 A computer data center certified under this article may not
3 be used to:

4 (1) Generate electricity for resale purposes.

5 (2) Generate, provide or sell electricity outside of the
6 computer data center.

7 Section 2914-D. Exemption certificate.

8 An owner, operator or colocation tenant must prepare and
9 deliver a properly executed exemption certificate to a vendor
10 from which the owner, operator or colocation tenant purchases
11 exempt property.

12 Section 2. This act shall take effect January 1, 2015.