

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1405

AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-1.1-10-44, AS AMENDED BY P.L.158-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 44. (a) As used in this section, "designating body" means the fiscal body of:

- (1) a county that does not contain a consolidated city; or
- (2) a municipality.

(b) As used in this section, "eligible business" means an entity that meets the following requirements:

- (1) The entity is engaged in a business that:

(A) operates; or

(B) leases qualified property for use in;

one (1) or more facilities or data centers dedicated to computing, networking, or data storage activities.

(2) The entity's qualified property is located at a facility or data center in **Indiana** that is located in an area designated as a high technology district area: **Indiana**.

(3) The entity, the lessor of qualified property (if the entity is a lessee), and all lessees of qualified property invest in the aggregate at least **ten million dollars (\$10,000,000)** **twenty-five million dollars (\$25,000,000)** in real and personal property at the facility or data center after June 30, 2012.

(4) The average wage of employees who are located in the county



or municipality and engaged in the operation of the facility or data center is at least one hundred twenty-five percent (125%) of the county average wage for the county in which the facility or data center operates.

(c) As used in this section, "enterprise information technology equipment" means the following:

- (1) Hardware supporting computing, networking, or data storage functions, including servers and routers.
- (2) Networking systems having an industry designation as equipment within the "enterprise" or "data center" class of networking systems that support the computing, networking, or data storage functions.
- (3) Generators and other equipment used to ensure an uninterrupted power supply to equipment described in subdivision (1) or (2).

The term does not include computer hardware designed for single user, workstation, or departmental level use.

(d) As used in this section, "fiscal body" has the meaning set forth in IC 36-1-2-6.

(e) As used in this section, "high technology district area" means all or any part of the area that:

- (1) is within the corporate limits of a county or municipality; and
- (2) has been designated as a high technology district area by the appropriate designating body under subsection (h).

(f) (e) As used in this section, "municipality" has the meaning set forth in IC 36-1-2-11.

(g) (f) As used in this section, "qualified property" means enterprise information technology equipment purchased after June 30, 2012, and any additions to or replacements to such property.

(h) Before adopting a final resolution to designate a high technology district area, a designating body must first adopt a declaratory resolution provisionally finding that all or a part of the area within the designating body's jurisdiction is a high technology district area. The declaratory resolution must include a description of the affected area and must be filed with the county assessor. The designating body shall then publish notice of the adoption and the substance of the declaratory resolution in accordance with IC 5-3-1 and file a copy of the notice and the declaratory resolution with each taxing unit in the county. The notice must specify a date when the designating body will receive and hear all remonstrances and objections from interested persons. The designating body shall file the notice and the declaratory resolution with the officers of the taxing units who are authorized to fix budgets,



tax rates, and tax levies under IC 6-1.1-17-5 at least ten (10) days before the date for the public hearing. After the designating body considers the testimony presented at the public hearing, the designating body may adopt a second and final resolution before January 1, 2017, determining whether to designate a high technology district area and modifying, confirming, or rescinding the declaratory resolution. This determination of the designating body is final.

(f) A designating body may, after adopting a final resolution under subsection (h) designating an area as a high technology district area;

(g) A **designating body** may enter into an agreement with an eligible business to grant the eligible business a property tax exemption. In the case of a county, the exemption applies only to qualified property that is located in unincorporated territory of the county. In the case of a municipality, the exemption applies only to qualified property that is located in the municipality. The property tax exemption applies to the qualified property only if the designating body and the eligible business enter into an agreement concerning the property tax exemption. The agreement must specify the duration of the property tax exemption. The agreement may specify that if the ownership of qualified property is transferred by an eligible business, the transferee is entitled to the property tax exemption on the same terms as the transferor. If a designating body ~~adopts a final resolution under subsection (h) and~~ enters into an agreement with an eligible business, the qualified property owned by the eligible business is exempt from property taxation as provided in the resolution and the agreement.

(f) (h) If a designating body ~~adopts a final resolution under subsection (h) and~~ enters into an agreement under subsection (f) (g) to provide a property tax exemption, the property tax exemption continues for the period specified in the agreement, notwithstanding the January 1, 2017, deadline to adopt a final resolution under subsection (h). **agreement.**

SECTION 2. IC 6-2.5-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2019 (RETROACTIVE)]:

Chapter 15. Gross Retail and Use Tax Exemption For Data Center Equipment

Sec. 1. As used in this chapter, "corporation" refers to the Indiana economic development corporation established under IC 5-28-3, unless context clearly denotes otherwise.

Sec. 2. As used in this chapter, "data center equipment" means computer equipment or software purchased or leased for the



processing, storage, retrieval, or communication of data that is preapproved by the corporation. The term includes the following:

- (1) Servers, routers, connections, monitoring and security systems, and other enabling machinery, equipment, and hardware, regardless of whether the property is affixed to or incorporated into real property.**
- (2) Equipment used in the operation of computer equipment or software or for the benefit of the qualified data center, including component parts, installations, refreshments, replacements, and upgrades, regardless of whether the property is affixed to or incorporated into real property.**
- (3) All equipment necessary for the transformation, generation, distribution, or management of electricity that is required to operate computer server equipment, including substations, generators, uninterruptible energy equipment, supplies, conduit, fuel piping and storage, cabling, duct banks, switches, switchboards, batteries, testing equipment, and backup generators.**
- (4) All equipment necessary to cool and maintain a controlled environment for the operation of the computer servers and other components of the data center, including chillers, mechanical equipment, refrigerant piping, fuel piping and storage, adiabatic and free cooling systems, cooling towers, water softeners, air handling units, indoor direct exchange units, fans, ducting, and filters.**
- (5) All water conservation systems, including facilities or mechanisms that are designed to collect, conserve, and reuse water.**
- (6) All computer server equipment, chassis, networking equipment, switches, racks, fiber optic and copper cabling, trays, and conduit.**
- (7) All conduit, ducting, and fiber optic and copper cabling that may be located outside the data center, directly related to connecting one (1) or more distributed qualified data center locations.**
- (8) All monitoring equipment and security systems.**
- (9) Modular data centers and preassembled components of any item described in this section, including components used in the manufacturing of modular data centers.**
- (10) All software.**
- (11) Other tangible and intangible personal property that is essential to the operations of a data center, excluding property**



used in the administration of the facility.

(12) All electricity used by qualified data center equipment, excluding electricity used in the administration of the facility.

Sec. 3. As used in this chapter, "eligible data center costs" means expenditures made after December 31, 2018, for the development, acquisition, construction, and operation of a facility to be used as a qualified data center, including costs of land, buildings, site improvements, modular data centers, computer data center equipment acquisition and permitting, lease payments, site characterization and assessment, engineering, and design used directly and exclusively in a qualified data center.

Sec. 4. As used in this chapter, "entity" means an individual, an estate, a trust, a receiver, a cooperative association, a corporation, a company, a firm, a partnership, a limited liability company, a limited liability partnership, or a joint venture.

Sec. 5. As used in this chapter, "facility" means one (1) or more tracts of land in Indiana and any structures and personal property contained on the land for the operation of a data center in either a single location or multiple distributed locations.

Sec. 6. As used in this chapter, "interest in a qualified data center" means an entity that is the owner, operator, or qualified colocation tenant in a qualified data center.

Sec. 7. As used in this chapter, "operator" means an entity, other than an owner or a qualified colocation tenant, operating a data center pursuant to a lease or other contract with the owner or a lessor. The term includes a licensed property management company, a property lessor, or any other individual or entity responsible for the control, oversight, or maintenance of a facility. The term also includes an affiliate of an operator.

Sec. 8. As used in this chapter, "owner" means an entity holding fee title to a facility. The term also includes an affiliate of an owner.

Sec. 9. As used in this chapter, "qualified colocation tenant" means an entity that contracts with the owner or operator of a qualified data center that is certified under this chapter to use or occupy all or part of the data center for a period of two (2) or more years.

Sec. 10. As used in this chapter, "qualified data center" means one (1) or more buildings that:

(1) are rehabilitated or constructed to house a group of networked server computers in one (1) physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a



**particular business, taxonomy, or body of knowledge; and
(2) create a minimum qualified investment on or before the fifth anniversary of the issuance of the specific transaction award certificate by the department of at least:**

- (A) one hundred fifty million dollars (\$150,000,000), if it is located in a county having a population greater than one hundred thousand (100,000);**
- (B) one hundred million dollars (\$100,000,000), if it is located in a county having a population greater than fifty thousand (50,000) and not more than one hundred thousand (100,000); or**
- (C) twenty-five million dollars (\$25,000,000), if it is located in a county having a population of not more than fifty thousand (50,000).**

Sec. 11. As used in this chapter, "qualified data center equipment" means data center equipment located at a qualified data center.

Sec. 12. As used in this chapter, "qualified data center user" means an entity that is using qualified data center equipment.

Sec. 13. As used in this chapter, "qualified investment" means, with respect to a qualified data center, the aggregate nonduplicative eligible data center costs expended by any entity with an interest in the qualified data center.

Sec. 14. (a) A qualified data center user that holds an interest in a qualified data center may apply to the corporation for a specific transaction award certificate to make purchases, other than the purchase of utilities described in IC 6-2.5-4-5, that are exempt under this chapter. The request must be on a form prescribed by the corporation.

(b) The corporation has exclusive authority over issues related to issuing a specific transaction award certificate.

(c) If the corporation issues a specific transaction award certificate under this chapter, the certificate must state that the facility is a qualified data center.

(d) A specific transaction award certificate issued by the corporation shall expire not later than:

- (A) twenty-five (25) years after the date of issuance; or**
- (B) fifty (50) years after the date of issuance if the qualified investment is seven hundred fifty million dollars (\$750,000,000) or greater.**

Sec. 15. The following apply if the corporation approves an application for a specific transaction award certificate:



(1) The corporation shall require the qualified data center user to enter into an agreement with the corporation as a condition of receiving a specific transaction award certificate under this chapter.

(2) The agreement with the corporation must include:

(A) a detailed description of the project that is the subject of the agreement;

(B) the duration of the specific transaction award certificate and the first taxable year for which the award provided by this chapter may be used; and

(C) a requirement that the qualified data center user annually report to the corporation on the amount of taxes that were not paid by the qualified data center user in connection with the purchase of data center equipment.

Sec. 16. The sale of qualified data center equipment is exempt from the state gross retail tax if the qualified data center equipment:

(1) is sold to a qualified data center user approved by the corporation under this chapter; and

(2) will be located in a qualified data center.

Sec. 17. A qualified data center user is not entitled to the exemption provided by section 16 of this chapter unless the qualified data center user provides the seller with an exemption certificate on a form prescribed by the department and a copy of the specific transaction award certificate issued by the corporation. In the case of utilities described in IC 6-2.5-4-5, the qualified data center user may issue an exemption certificate on a form prescribed by the department and a copy of the specific transaction award certificate issued by the corporation to cover all utility purchases from that seller. However, for the corporation to issue a specific transaction award certificate for utilities described in IC 6-2.5-4-5, the qualified data center user must agree to report and remit use tax under this article to the department on the part of the utility purchases used for administration of the facility.

Sec. 18. (a) This section does not apply to a qualified data center user that is a qualified colocation tenant.

(b) If the corporation determines that a qualified data center user that did not pay taxes as a result of the award provided under this chapter is not entitled to the award because of the qualified data center user's noncompliance with the requirements of the sales tax award certificate agreement or this chapter, the corporation shall, after giving the qualified data center user an



opportunity to explain the noncompliance:

- (1) **notify the department of the noncompliance; and**
 - (2) **request the department to impose an assessment on the qualified data center user in an amount that may not exceed the sum of the taxes not paid as a result of the exemption provided under this chapter together with interest and penalties required or permitted by law.**
 - (c) **Notwithstanding the provisions of IC 6-8.1-5-2, an assessment under subsection (b) is considered timely if the department issues a proposed assessment:**
 - (1) **not later than one hundred eighty (180) days from the date the department is notified of the noncompliance; or**
 - (2) **the date on which a proposed assessment could otherwise be issued in a timely manner under IC 6-8.1-5-2;**
- whichever is later.**

Sec. 19. Except as provided in section 18 of this chapter, if the corporation approves a qualified data center user's application to receive a specific transaction award certificate and enters into an agreement with the qualified data center user for a specific transaction award certificate, the corporation's certification of the qualified data center remains in effect, even if there is a future transfer, sale, or disposition, directly or indirectly, of the qualified data center. A subsequent owner shall enter into an agreement with the corporation before the subsequent owner is entitled to receive a specific transaction award certificate for the remainder of the eligibility period.

Sec. 20. Beginning in 2030, and every ten (10) years thereafter, the corporation shall submit to the legislative council in an electronic format under IC 5-14-6 an economic and fiscal impact study evaluating the statewide impact of data center investments in Indiana.

SECTION 3. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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