

1 AN ACT relating to the taxation of data centers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) On and after July 1, 2021, and on and before June 30, 2051, the taxes imposed by*
6 *this chapter do not apply to:*

7 *(a) Tangible personal property used to construct, retrofit, or upgrade a data*
8 *center; and*

9 *(b) Data center equipment for use in that data center;*
10 *purchased by a person engaged primarily in a commercial activity or*
11 *separately operated segment of business that exists for the purposes of*
12 *engaging solely in the operation of a data center or operating by collocating*
13 *with a person that operates a data center.*

14 *(2) The exemption provided in subsection (1) of this section shall apply whether or*
15 *not the seller is under contract to deliver, assemble, and incorporate into real*
16 *estate the equipment, machinery, attachments, and any materials incorporated*
17 *into the construction, retrofit, or upgrade of the data center.*

18 *(3) To qualify for the exemption provided in subsection (1) of this section, the data*
19 *center shall certify to the department that it shall:*

20 *(a) Make capital investments in one (1) or more data centers after July 1, 2021,*
21 *in amounts of at least one hundred fifty million dollars (\$150,000,000) in*
22 *the aggregate within the first five (5) years after commencement of*
23 *construction; and*

24 *(b) Create and maintain at least twenty (20) new jobs at the data center within*
25 *two (2) calendar years after the commencement of operations.*

26 *(4) (a) Data centers shall report to the department annually, on or before October 1*
27 *of each year, the progress made toward achieving performance targets,*

1 which shall include:

2 1. A listing of the new jobs, each with an associated average annual
3 wage; and

4 2. The amount of capital investment in data center facilities and
5 equipment.

6 (b) If a data center fails to meet the investment and job creation requirements
7 provided within the time periods required in this section, it shall repay the
8 sales or use taxes that were exempted, plus accrued interest from the dates
9 on which purchases were made, to the department within sixty (60) days of
10 the noncompliance.

11 (5) On or before December 1, 2021, and on or before each December 1 thereafter as
12 long as the exemption applies, the department shall report to the Interim Joint
13 Committee on Appropriations and Revenue the aggregate total amount of capital
14 investment and new jobs reported for the immediately preceding fiscal year.

15 (6) Notwithstanding KRS 139.720, every data center qualifying and using this
16 exemption shall keep the records, receipts, invoices, and other pertinent papers in
17 such form and timeframe as the department may require.

18 (7) As used in this section:

19 (a) "Capital investment" means:

20 1. Obligations incurred for labor and to contractors, subcontractors,
21 builders, and materialmen in connection with the acquisition,
22 construction, installation, equipping, and rehabilitation of a project;

23 2. The cost of acquiring land or rights in land within the development
24 area on the footprint of the project, and any cost incident thereto,
25 including recording fees;

26 3. The cost of contract bonds and of insurance of all kinds that may be
27 required or necessary during the course of acquisition, construction,

1 installation, equipping, and rehabilitation of a project which is not
2 paid by the contractor or contractors or otherwise provided;

3 4. All costs of architectural and engineering services, including test
4 borings, surveys, estimates, plans, specifications, preliminary
5 investigations, supervision of construction, and the performance of all
6 the duties required by or consequent upon the acquisition,
7 construction, installation, equipping, and rehabilitation of a project;

8 5. All costs that are required to be paid under the terms of any contract
9 for the acquisition, construction, installation, equipping, and
10 rehabilitation of a project; and

11 6. All other costs of a nature comparable to those described in this
12 subsection that occur after preliminary approval;

13 (b) "Commencement of construction" means the first date on which a capital
14 investment has been made for a data center;

15 (c) "Commencement of operations" means the date on which a certificate of
16 occupancy is issued for a data center;

17 (d) "Data center" means a person that has a facility comprised of one (1) or
18 more buildings in Kentucky that is used to house and continuously operate
19 computer servers and associated data center equipment for the transmission
20 and storage of data where the facility has the following characteristics:

21 1. Uninterruptible power supplies, generator power, or both;

22 2. Sophisticated fire suppression and prevention systems;

23 3. Enhanced physical security; and

24 4. Restricted access;

25 (e) 1. "Data center equipment" means:

26 a. Equipment that is used to outfit, operate, or benefit a data
27 center; and

1 **b. Component parts, installations, refreshments, replacements, and**
2 **upgrades to the equipment, regardless of whether any of the**
3 **equipment is affixed to or incorporated into real property.**

4 **2. Eligible "data center equipment" includes:**

5 **a. Equipment necessary for the transformation, generation,**
6 **distribution, or management of electricity that is required to**
7 **operate computer servers or similar data storage equipment,**
8 **including:**

9 **i. Uninterruptible energy supplies;**

10 **ii. Generators;**

11 **iii. Conduit;**

12 **iv. Gaseous fuel piping;**

13 **v. Cabling;**

14 **vi. Duct banks;**

15 **vii. Switches;**

16 **viii. Switchboards;**

17 **ix. Batteries; and**

18 **x. Testing equipment;**

19 **b. Equipment necessary to cool and maintain a controlled**
20 **environment for the operation of computer servers or data**
21 **storage systems and other components of a computer data center,**
22 **including:**

23 **i. Mechanical equipment;**

24 **ii. Refrigerant piping;**

25 **iii. Gaseous fuel piping;**

26 **iv. Adiabatic and free cooling systems;**

27 **v. Cooling towers;**

- 1 vi. Water softeners;
- 2 vii. Air handling units;
- 3 viii. Indoor direct exchange units;
- 4 ix. Fans;
- 5 x. Ducting; and
- 6 xi. Filters;
- 7 c. Water conservation systems, including facilities or mechanisms
- 8 that are designed to collect, conserve, and reuse water;
- 9 d. Software, including but not limited to:
- 10 i. Enabling software and licensing agreements;
- 11 ii. Computer servers or similar data storage equipment;
- 12 iii. Chassis;
- 13 iv. Networking equipment;
- 14 v. Switches;
- 15 vi. Racks;
- 16 vii. Cabling;
- 17 viii. Trays; and
- 18 ix. Conduits;
- 19 e. Monitoring equipment;
- 20 f. Security systems;
- 21 g. i. Modular data centers; and
- 22 ii. Preassembled components of any item, including
- 23 components used in the manufacturing of modular data
- 24 centers; and
- 25 h. Other tangible personal property that is essential to the
- 26 operations of a computer data center;
- 27 (f) "Full-time employee" means a person employed for a minimum of thirty-

1 five (35) hours per week and subject to the tax imposed by KRS 141.020;

2 and

3 (g) 1. "New jobs" means new jobs that:

4 a. Are created and located in the state;

5 b. Are nonseasonal;

6 c. Are full-time, meaning a minimum of thirty-five (35) hours a
 7 week and subject to the state income tax imposed by KRS
 8 141.020;

9 d. i. Collectively pay an average weekly wage that equals or
 10 exceeds one hundred twenty-five percent (125%) of the
 11 average weekly wage for the county where the data center
 12 is located, as determined by the most recent report of the
 13 United States Bureau of Labor Statistics; and

14 ii. If the average weekly wage calculated in subpart i. of this
 15 subdivision is less than one hundred fifty percent (150%) of
 16 the federal minimum wage, then the base hourly wage
 17 shall be one hundred fifty percent (150%) of the federal
 18 minimum wage.

19 2. "New jobs" do not include jobs that merely change locations within
 20 the state.

21 ➔Section 2. KRS 131.190 is amended to read as follows:

- 22 (1) No present or former commissioner or employee of the department, present or
 23 former member of a county board of assessment appeals, present or former property
 24 valuation administrator or employee, present or former secretary or employee of the
 25 Finance and Administration Cabinet, former secretary or employee of the Revenue
 26 Cabinet, or any other person, shall intentionally and without authorization inspect or
 27 divulge any information acquired by him of the affairs of any person, or information

1 regarding the tax schedules, returns, or reports required to be filed with the
2 department or other proper officer, or any information produced by a hearing or
3 investigation, insofar as the information may have to do with the affairs of the
4 person's business.

5 (2) The prohibition established by subsection (1) of this section shall not extend to:

- 6 (a) Information required in prosecutions for making false reports or returns of
7 property for taxation, or any other infraction of the tax laws;
- 8 (b) Any matter properly entered upon any assessment record, or in any way made
9 a matter of public record;
- 10 (c) Furnishing any taxpayer or his properly authorized agent with information
11 respecting his own return;
- 12 (d) Testimony provided by the commissioner or any employee of the department
13 in any court, or the introduction as evidence of returns or reports filed with the
14 department, in an action for violation of state or federal tax laws or in any
15 action challenging state or federal tax laws;
- 16 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
17 energy resources assessed under KRS 132.820, or owners of surface land
18 under which the unmined minerals lie, factual information about the owner's
19 property derived from third-party returns filed for that owner's property, under
20 the provisions of KRS 132.820, that is used to determine the owner's
21 assessment. This information shall be provided to the owner on a confidential
22 basis, and the owner shall be subject to the penalties provided in KRS
23 131.990(2). The third-party filer shall be given prior notice of any disclosure
24 of information to the owner that was provided by the third-party filer;
- 25 (f) Providing to a third-party purchaser pursuant to an order entered in a
26 foreclosure action filed in a court of competent jurisdiction, factual
27 information related to the owner or lessee of coal, oil, gas reserves, or any

- 1 other mineral resources assessed under KRS 132.820. The department may
2 promulgate an administrative regulation establishing a fee schedule for the
3 provision of the information described in this paragraph. Any fee imposed
4 shall not exceed the greater of the actual cost of providing the information or
5 ten dollars (\$10);
- 6 (g) Providing information to a licensing agency, the Transportation Cabinet, or
7 the Kentucky Supreme Court under KRS 131.1817;
- 8 (h) Statistics of gasoline and special fuels gallonage reported to the department
9 under KRS 138.210 to 138.448;
- 10 (i) Providing any utility gross receipts license tax return information that is
11 necessary to administer the provisions of KRS 160.613 to 160.617 to
12 applicable school districts on a confidential basis;
- 13 (j) Providing documents, data, or other information to a third party pursuant to an
14 order issued by a court of competent jurisdiction; or
- 15 (k) Providing information to the Legislative Research Commission under:
- 16 1. KRS 139.519 for purposes of the sales and use tax refund on building
17 materials used for disaster recovery;
 - 18 2. KRS 141.436 for purposes of the energy efficiency products credits;
 - 19 3. KRS 141.437 for purposes of the ENERGY STAR home and the
20 ENERGY STAR manufactured home credits;
 - 21 4. KRS 148.544 for purposes of the film industry incentives;
 - 22 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
23 tax credits and the job assessment fees;
 - 24 6. KRS 141.068 for purposes of the Kentucky investment fund;
 - 25 7. KRS 141.396 for purposes of the angel investor tax credit;
 - 26 8. KRS 141.389 for purposes of the distilled spirits credit;
 - 27 9. KRS 141.408 for purposes of the inventory credit;

- 1 10. KRS 141.390 for purposes of the recycling and composting credit;
- 2 11. KRS 141.3841 for purposes of the selling farmer tax credit;~~and~~
- 3 12. KRS 141.4231 for purposes of the renewable chemical production tax
- 4 credit; and

5 **13. Section 1 of this Act for the purposes of the data center sales and use**

6 **tax exemption.**

- 7 (3) The commissioner shall make available any information for official use only and on
- 8 a confidential basis to the proper officer, agency, board or commission of this state,
- 9 any Kentucky county, any Kentucky city, any other state, or the federal government,
- 10 under reciprocal agreements whereby the department shall receive similar or useful
- 11 information in return.
- 12 (4) Access to and inspection of information received from the Internal Revenue Service
- 13 is for department use only, and is restricted to tax administration purposes.
- 14 Information received from the Internal Revenue Service shall not be made available
- 15 to any other agency of state government, or any county, city, or other state, and shall
- 16 not be inspected intentionally and without authorization by any present secretary or
- 17 employee of the Finance and Administration Cabinet, commissioner or employee of
- 18 the department, or any other person.
- 19 (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil
- 20 excise tax requirements of KRS Chapter 137 and statistics of natural gas production
- 21 as reported to the Department of Revenue under the natural resources severance tax
- 22 requirements of KRS Chapter 143A may be made public by the department by
- 23 release to the Energy and Environment Cabinet, Department for Natural Resources.
- 24 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
- 25 submissions for the 1989 tax year, the department may make public or divulge only
- 26 those portions of mine maps submitted by taxpayers to the department pursuant to
- 27 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-

1 out parcel areas. These electronic maps shall not be relied upon to determine actual
2 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
3 required under KRS Chapters 350 and 352 shall not be construed to constitute land
4 surveying or boundary surveys as defined by KRS 322.010 and any administrative
5 regulations promulgated thereto.

6 ➔Section 3. This Act takes effect on July 1, 2021.