
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1558 Session of
2017

INTRODUCED BY NESBIT, MILLARD, JAMES, RAPP, WARD, PHILLIPS-HILL
AND MILNE, JUNE 16, 2017

REFERRED TO COMMITTEE ON FINANCE, JUNE 16, 2017

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," in Computer Data Center Equipment Incentive
11 Program, further providing for definitions, for sales and use
12 tax refund, for application for certification, for review of
13 application, for eligibility requirements, for notification,
14 for revocation of certification, repealing provisions
15 relating to application and limitations and providing for
16 exemption certificate.

17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 Section 1. The definitions of "new investment" and "tax
20 refund" in section 2901-D of the act of March 4, 1971 (P.L.6,
21 No.2), known as the Tax Reform Code of 1971, added July 13, 2016
22 (P.L.526, No.84), are amended and the section is amended by
23 adding definitions to read:

24 Section 2901-D. Definitions.

25 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 * * *

4 "New investment." Construction, expansion or build out of
5 data center [space at either a new or an existing computer data
6 center] on or after [January 1, 2014] July 1, 2015, and the
7 purchase and installation of computer data center equipment,
8 except for items described under paragraph (4) of the definition
9 of "computer data center equipment."

10 * * *

11 "Tax exemption." The tax exemption provided for under this
12 article.

13 ["Tax refund." The tax refund provided for under this
14 article.]

15 "Telecommunications provider." A provider of
16 telecommunications services, as defined in 61 Pa. Code § 60.20
17 (relating to telecommunications service).

18 * * *

19 Section 2. Sections 2902-D, 2903-D, 2904-D(b), 2906-D, 2907-
20 D(b) and 2908-D(c) of the act, added July 13, 2016 (P.L.526,
21 No.84), are amended to read:

22 Section 2902-D. Sales and use tax [refund] exemption.

23 [(a) Application.--Beginning July 1, 2017, an owner or
24 operator or qualified tenant of a computer data center certified
25 under this article may apply for a tax refund of taxes paid
26 under Article II upon the sale at retail or use of computer data
27 center equipment for installation in a computer data center,
28 purchased by:

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

1 (2) A qualified tenant certified under this article.

2 (b) Applicability.--Taxes paid under Article II during the
3 qualification period shall be eligible for a refund under this
4 article.

5 (c) Exclusions.--The following do not qualify for a tax
6 refund:

7 (1) Computer data center equipment used by the computer
8 data center to:

9 (i) generate electricity for resale purposes to a
10 power utility, except for sales incidental to the primary
11 sale to computer data centers and which qualify under
12 subparagraph (ii); or

13 (ii) generate, provide or sell more than 5% of its
14 electricity outside of the computer data center.

15 (2) (Reserved).]

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

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

22 (2) A qualified tenant of a computer data center
23 certified under this article.

24 (b) Local sales and use tax.--The sale at retail or use of
25 computer data center equipment for installation in a computer
26 data center shall be exempt from a city or county tax on
27 purchase price authorized under Article XXXI-B of the act of
28 July 28, 1953 (P.L.723, No.230), known as the Second Class
29 County Code, and the act of June 5, 1991 (P.L.9, No.6), known as
30 the Pennsylvania Intergovernmental Cooperation Authority Act for

1 Cities of the First Class, if purchased by:

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

4 (2) A qualified tenant of a computer data center
5 certified under this article.

6 (c) Applicability.--A tax exemption shall apply during the
7 qualification period.

8 (d) Exclusions.--The following do not qualify for a tax
9 exemption:

10 (1) Telecommunications providers' computer data centers
11 that do not have retail or wholesale customers being billed
12 or paying for services, and whose majority of services are
13 for internal services to itself or its subsidiaries.

14 (2) Computer data center equipment used by the computer
15 data center to:

16 (i) generate electricity for resale purposes to a
17 power utility; or

18 (ii) generate, provide or sell more than 5% of its
19 electricity outside of the computer data center.

20 Section 2903-D. Application for certification.

21 To be considered for a certification, an owner or operator of
22 a computer data center shall submit to the department an
23 application on a form prescribed by the department that includes
24 the following:

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

27 (2) The address of the site where the facility is or
28 will be located, including, if applicable, information
29 sufficient to identify the specific portion or portions of
30 the facility comprising the computer data center.

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

3 (i) The anticipated investment associated with the
4 computer data center for which the certification is being
5 sought.

6 (ii)] An affirmation, signed by an authorized
7 executive representing the owner or operator, that the
8 computer data center is expected to satisfy the
9 certification requirements prescribed in section [2906-
10 D(1)] 2906-D.

11 [(4) If the computer data center is to qualify under
12 section 2906-D(2), an affirmation, signed by an authorized
13 executive representing the owner or operator, that the
14 computer data center has satisfied, or will satisfy, the
15 certification requirements prescribed in section 2906-D(2).]

16 (5) The department shall begin accepting applications no
17 later than 90 days after the effective date of this section.

18 Section 2904-D. Review of application.

19 * * *

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

27 Section 2906-D. [Eligibility] Computer data center
28 certification requirements.

29 [A computer data center must meet one of] To be certified, a
30 computer data center owner or operator must meet the following

1 requirements[, after taking into account the combined
2 investments made and annual compensation paid by the owner or
3 operator of the computer data center or the qualified tenant]:

4 (1) On or before the fourth anniversary of
5 certification, the computer data center [creates] owner or
6 operator must make a minimum investment of:

7 (i) [At] at least [\$25,000,000] \$35,000,000 of new
8 investment if the computer data center is located in a
9 county with a population of 250,000 or fewer individuals;
10 or

11 (ii) [At] at least [\$50,000,000] \$60,000,000 of new
12 investment if the computer data center is located in a
13 county with a population of more than 250,000
14 individuals.

15 (2) [One or more taxpayers operating or occupying a
16 computer data center, in the aggregate,] On or before the
17 fourth anniversary of certification, the computer data center
18 owner or operator must pay annual compensation of at least
19 \$1,000,000 to employees at the certified computer data center
20 site for each year of the certification [after the fourth
21 anniversary of certification].

22 Section 2907-D. Notification.

23 * * *

24 (b) Records.--Until a computer data center satisfies the
25 requirements prescribed in section 2906-D, the owner, operator
26 and qualified tenants shall maintain detailed records of all
27 investments created by the computer data center, including costs
28 of buildings and computer data center equipment, and all tax
29 [refunds] exemptions directly received by the owner, operator or
30 qualified tenant.

1 Section 2908-D. Revocation of certification.

2 * * *

3 (c) Recapture.--If certification is revoked pursuant to this
4 section, the qualification period of any owner, operator or
5 qualified tenant of the computer data center expires, and the
6 department may recapture from the owner, operator or qualified
7 tenant all or part of the tax [refund] exemption provided
8 directly to the owner or operator or qualified tenant. The
9 department may give special consideration or allow a temporary
10 exemption from recapture of the tax [refund] exemption if there
11 is extraordinary hardship due to factors beyond the control of
12 the owner or operator or qualified tenant. The department may
13 require the owner or operator or qualified tenant to file
14 appropriate amended tax returns to reflect any recapture of the
15 tax exemption.

16 Section 3. Sections 2913-D and 2914-D of the act are
17 repealed:

18 [Section 2913-D. Application.

19 (a) General rule.--An owner, operator or qualified tenant
20 may apply for a tax refund under this article on or before July
21 30, 2017, and each July 30 thereafter.

22 (b) Notification.--No later than September 30, 2017, and
23 each September 30 thereafter, the department shall notify each
24 applicant of the amount of tax refund approved by the
25 department.

26 Section 2914-D. Limitations.

27 (a) Total.--The total amount of State tax refunds approved
28 by the department under this article shall not exceed \$5,000,000
29 in any fiscal year.

30 (b) Allocation.--If the total amount of tax refunds approved

1 for all applicants exceeds the limitation on the amount of tax
2 refunds in subsection (a) in a fiscal year, the tax refund to be
3 received by each applicant shall be determined as follows:

4 (1) Divide:

5 (i) the tax refund approved for the applicant; by

6 (ii) the total of all tax refunds approved for all
7 applicants.

8 (2) Multiply:

9 (i) the amount under subsection (a); by

10 (ii) the quotient under paragraph (1).

11 (3) The algebraic form of the calculation under this
12 subsection is:

13 Taxpayer's tax refund = amount allocated for those
14 tax refunds X (tax refund approved for the
15 applicant/total of all tax refunds approved for all
16 applicants).]

17 Section 4. The act is amended by adding a section to read:

18 Section 2915-D. Exemption certificate.

19 An owner, operator or tenant must prepare and deliver a
20 properly executed exemption certificate to a vendor from which
21 the owner, operator or tenant purchases exempt property.

22 Section 5. This act shall take effect July 1, 2018.