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SENATE BILL 5015

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State of Washington

65th Legislature

2017 Regular Session

By Senator Roach

Prefiled 12/22/16.

1 AN ACT Relating to modifying the tax preference for data centers;  
2 and amending RCW 82.08.986.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 82.08.986 and 2015 3rd sp.s. c 6 s 302 are each  
5 amended to read as follows:

6 (1) An exemption from the tax imposed by RCW 82.08.020 is  
7 provided for sales to qualifying businesses and to qualifying tenants  
8 of eligible server equipment to be installed, without intervening  
9 use, in an eligible computer data center, and to charges made for  
10 labor and services rendered in respect to installing eligible server  
11 equipment. Until January 1, 2026, the exemption also applies to sales  
12 to qualifying businesses and to qualifying tenants of eligible power  
13 infrastructure, including labor and services rendered in respect to  
14 constructing, installing, repairing, altering, or improving eligible  
15 power infrastructure.

16 (2)(a) In order to claim the exemption under this section, a  
17 qualifying business or a qualifying tenant must submit an application  
18 to the department for an exemption certificate. The application must  
19 include the information necessary, as required by the department, to  
20 determine that a business or tenant qualifies for the exemption under  
21 this section. The department must issue exemption certificates to

1 qualifying businesses and qualifying tenants. The department may  
2 assign a unique identification number to each exemption certificate  
3 issued under this section.

4 (b) A qualifying business or a qualifying tenant claiming the  
5 exemption under this section must present the seller with an  
6 exemption certificate in a form and manner prescribed by the  
7 department. The seller must retain a copy of the certificate for the  
8 seller's files.

9 (c) With respect to computer data centers for which the  
10 commencement of construction occurs after July 1, 2015, but before  
11 July 1, 2019, the exemption provided in this section is limited to no  
12 more than eight computer data centers, with total eligible data  
13 centers provided under this section limited to twelve from July 1,  
14 2015, through July 1, 2025. Tenants of qualified data centers do not  
15 constitute additional data centers under the limit. The exemption is  
16 available on a first-in-time basis based on the date the application  
17 required under this section is received by the department. Exemption  
18 certificates expire two years after the date of issuance, unless  
19 construction has been commenced.

20 (3)(a) Within six years of the date that the department issued an  
21 exemption certificate under this section to a qualifying business or  
22 a qualifying tenant with respect to an eligible computer data center,  
23 the qualifying business or qualifying tenant must establish that net  
24 employment at the eligible computer data center has increased by a  
25 minimum of:

26 (i) Thirty-five family wage employment positions; or

27 (ii) Three family wage employment positions for each twenty  
28 thousand square feet of space or less that is newly dedicated to  
29 housing working servers at the eligible computer data center. For  
30 qualifying tenants, the number of family wage employment positions  
31 that must be increased under this subsection (3)(a)(ii) is based only  
32 on the space occupied by the qualifying tenant in the eligible  
33 computer data center.

34 (b) In calculating the net increase in family wage employment  
35 positions:

36 (i) The owner of an eligible computer data center, in addition to  
37 its own net increase in family wage employment positions, may  
38 include:

39 (A) The net increase in family wage employment positions employed  
40 by qualifying tenants; and

1 (B) The net increase in family wage employment positions  
2 described in (c)(ii)(B) of this subsection (3).

3 (ii)(A) Qualifying tenants, in addition to their own net increase  
4 in family wage employment positions, may include:

5 (I) A portion of the net increase in family wage employment  
6 positions employed by the owner; and

7 (II) A portion of the net increase in family wage employment  
8 positions described in (c)(ii)(B) of this subsection (3).

9 (B) The portion of the net increase in family wage employment  
10 positions to be counted under this subsection (3)(b)(ii) by each  
11 qualifying tenant must be in proportion to the amount of space in the  
12 eligible computer data center occupied by the qualifying tenant  
13 compared to the total amount of space in the eligible computer data  
14 center occupied by all qualifying tenants.

15 (c)(i) For purposes of this subsection, family wage employment  
16 positions are new permanent employment positions requiring forty  
17 hours of weekly work, or their equivalent, on a full-time basis at  
18 the eligible computer data center and receiving a wage equivalent to  
19 or greater than one hundred fifty percent of the per capita personal  
20 income of the county in which the qualified project is located. An  
21 employment position may not be counted as a family wage employment  
22 position unless the employment position is entitled to health  
23 insurance coverage provided by the employer of the employment  
24 position. For purposes of this subsection (3)(c), "new permanent  
25 employment position" means an employment position that did not exist  
26 or that had not previously been filled as of the date that the  
27 department issued an exemption certificate to the owner or qualifying  
28 tenant of an eligible computer data center, as the case may be.

29 (ii)(A) Family wage employment positions include positions filled  
30 by employees of the owner of the eligible computer data center and by  
31 employees of qualifying tenants.

32 (B) Family wage employment positions also include individuals  
33 performing work at an eligible computer data center as an independent  
34 contractor hired by the owner of the eligible computer data center or  
35 as an employee of an independent contractor hired by the owner of the  
36 eligible computer data center, if the work is necessary for the  
37 operation of the computer data center, such as security and building  
38 maintenance, and provided that all of the requirements in (c)(i) of  
39 this subsection (3) are met.

1 (d) All previously exempted sales and use taxes are immediately  
2 due and payable for a qualifying business or qualifying tenant that  
3 does not meet the requirements of this subsection.

4 (4) A qualifying business or a qualifying tenant claiming an  
5 exemption under this section or RCW 82.12.986 must complete an annual  
6 report with the department as required under RCW 82.32.534.

7 (5)(a) The exemption provided in this section does not apply to:

8 (i) Any person who has received the benefit of the deferral  
9 program under chapter 82.60 RCW on: (A) The construction, renovation,  
10 or expansion of a structure or structures used as a computer data  
11 center; or (B) machinery or equipment used in a computer data center;  
12 and

13 (ii) Any person affiliated with a person within the scope of  
14 (a)(i) of this subsection (5).

15 (b) If a person claims an exemption under this section and  
16 subsequently receives the benefit of the deferral program under  
17 chapter 82.60 RCW on either the construction, renovation, or  
18 expansion of a structure or structures used as a computer data center  
19 or machinery or equipment used in a computer data center, the person  
20 must repay the amount of taxes exempted under this section. Interest  
21 as provided in chapter 82.32 RCW applies to amounts due under this  
22 section until paid in full.

23 (6) The definitions in this subsection apply throughout this  
24 section unless the context clearly requires otherwise.

25 (a) "Affiliated" means that one person has a direct or indirect  
26 ownership interest of at least twenty percent in another person.

27 (b) "Building" means a fully enclosed structure with a weather  
28 resistant exterior wall envelope or concrete or masonry walls  
29 designed in accordance with the requirements for structures under  
30 chapter 19.27 RCW. This definition of "building" only applies to  
31 computer data centers for which commencement of construction occurs  
32 on or after July 1, 2015.

33 (c)(i) "Computer data center" means a facility comprised of one  
34 or more buildings, which may be comprised of multiple businesses,  
35 constructed or refurbished specifically, and used primarily, to house  
36 working servers, where the facility has the following  
37 characteristics: (A) Uninterruptible power supplies, generator backup  
38 power, or both; (B) sophisticated fire suppression and prevention  
39 systems; and (C) enhanced physical security, such as: Restricted  
40 access to the facility to selected personnel; permanent security

1 guards; video camera surveillance; an electronic system requiring  
2 passcodes, keycards, or biometric scans, such as hand scans and  
3 retinal or fingerprint recognition; or similar security features.

4 (ii) For a computer data center comprised of multiple buildings,  
5 each separate building constructed or refurbished specifically, and  
6 used primarily, to house working servers is considered a computer  
7 data center if it has all of the characteristics listed in (c)(i)(A)  
8 through (C) of this subsection (6).

9 (iii) A facility comprised of one building or more than one  
10 building must have a combined square footage of at least one hundred  
11 thousand square feet.

12 (d) "Electronic data storage and data management services"  
13 include, but are not limited to: Providing data storage and backup  
14 services, providing computer processing power, hosting enterprise  
15 software applications, and hosting web sites. The term also includes  
16 providing services such as email, web browsing and searching, media  
17 applications, and other online services, regardless of whether a  
18 charge is made for such services.

19 (e)(i) "Eligible computer data center" means a computer data  
20 center:

21 ~~(A) ((Located in a rural county as defined in RCW 82.14.370;~~  
22 ~~+B))~~ Having at least twenty thousand square feet dedicated to  
23 housing working servers, where the server space has not previously  
24 been dedicated to housing working servers; and

25 ~~((+C))~~ (B) For which the commencement of construction occurs:

26 (I) After March 31, 2010, and before July 1, 2011;

27 (II) After March 31, 2012, and before July 1, 2015; or

28 (III) After June 30, 2015, and before July 1, 2025.

29 (ii) For purposes of this section, "commencement of construction"  
30 means the date that a building permit is issued under the building  
31 code adopted under RCW 19.27.031 for construction of the computer  
32 data center. The construction of a computer data center includes the  
33 expansion, renovation, or other improvements made to existing  
34 facilities, including leased or rented space. "Commencement of  
35 construction" does not include soil testing, site clearing and  
36 grading, site preparation, or any other related activities that are  
37 initiated before the issuance of a building permit for the  
38 construction of the foundation of a computer data center.

39 (iii) With respect to facilities in existence on April 1, 2010,  
40 that are expanded, renovated, or otherwise improved after March 31,

1 2010, or facilities in existence on April 1, 2012, that are expanded,  
2 renovated, or otherwise improved after March 31, 2012, or facilities  
3 in existence on July 1, 2015, that are expanded, renovated, or  
4 otherwise improved after June 30, 2015, an eligible computer data  
5 center includes only the portion of the computer data center meeting  
6 the requirements in (e)(i)(~~(B)~~) (A) of this subsection (6).

7 (f) "Eligible power infrastructure" means all fixtures and  
8 equipment owned by a qualifying business or qualifying tenant and  
9 necessary for the transformation, distribution, or management of  
10 electricity that is required to operate eligible server equipment  
11 within an eligible computer data center. The term includes  
12 generators; wiring; cogeneration equipment; and associated fixtures  
13 and equipment, such as electrical switches, batteries, and  
14 distribution, testing, and monitoring equipment. The term does not  
15 include substations.

16 (g) "Eligible server equipment" means:

17 (i) For a qualifying business whose computer data center  
18 qualifies as an eligible computer data center under (e)(i)(~~(C)~~) (B)  
19 (I) of this subsection (6), the original server equipment installed  
20 in an eligible computer data center on or after April 1, 2010, and  
21 before January 1, 2026, and replacement server equipment. For  
22 purposes of this subsection (6)(g)(i), "replacement server equipment"  
23 means server equipment that:

24 (A) Replaces existing server equipment, if the sale or use of the  
25 server equipment to be replaced qualified for an exemption under this  
26 section or RCW 82.12.986; and

27 (B) Is installed and put into regular use before April 1, 2018.

28 (ii) For a qualifying business whose computer data center  
29 qualifies as an eligible computer data center under (e)(i)(~~(C)~~) (B)  
30 (II) of this subsection (6), "eligible server equipment" means the  
31 original server equipment installed in an eligible computer data  
32 center on or after April 1, 2012, and before January 1, 2026, and  
33 replacement server equipment. For purposes of this subsection  
34 (6)(g)(ii), "replacement server equipment" means server equipment  
35 that:

36 (A) Replaces existing server equipment, if the sale or use of the  
37 server equipment to be replaced qualified for an exemption under this  
38 section or RCW 82.12.986; and

39 (B) Is installed and put into regular use before April 1, 2024.

1 (iii)(A) For a qualifying business whose computer data center  
2 qualifies as an eligible computer data center under (e)(i)((~~C~~)) (B)  
3 (III) of this subsection (6), "eligible server equipment" means the  
4 original server equipment installed in a building within an eligible  
5 computer data center on or after July 1, 2015, and replacement server  
6 equipment. Server equipment installed in movable or fixed stand-  
7 alone, prefabricated, or modular units, including intermodal shipping  
8 containers, is not "directly installed in a building." For purposes  
9 of this subsection (6)(g)(iii)(A), "replacement server equipment"  
10 means server equipment that replaces existing server equipment, if  
11 the sale or use of the server equipment to be replaced qualified for  
12 an exemption under this section or RCW 82.12.986; and

13 (B) Is installed and put into regular use no later than twelve  
14 years after the date of the certificate of occupancy.

15 (iv) For a qualifying tenant who leases space within an eligible  
16 computer data center, "eligible server equipment" means the original  
17 server equipment installed within the space it leases from an  
18 eligible computer data center on or after April 1, 2010, and before  
19 January 1, 2026, and replacement server equipment. For purposes of  
20 this subsection (6)(g)(iv), "replacement server equipment" means  
21 server equipment that:

22 (A) Replaces existing server equipment, if the sale or use of the  
23 server equipment to be replaced qualified for an exemption under this  
24 section or RCW 82.12.986;

25 (B) Is installed and put into regular use before April 1, 2024;  
26 and

27 (C) For tenants leasing space in an eligible computer data center  
28 built after July 1, 2015, is installed and put into regular use no  
29 later than twelve years after the date of the certificate of  
30 occupancy.

31 (h) "Qualifying business" means a business entity that exists for  
32 the primary purpose of engaging in commercial activity for profit and  
33 that is the owner of an eligible computer data center. The term does  
34 not include the state or federal government or any of their  
35 departments, agencies, and institutions; tribal governments;  
36 political subdivisions of this state; or any municipal, quasi-  
37 municipal, public, or other corporation created by the state or  
38 federal government, tribal government, municipality, or political  
39 subdivision of the state.

1 (i) "Qualifying tenant" means a business entity that exists for  
2 the primary purpose of engaging in commercial activity for profit and  
3 that leases space from a qualifying business within an eligible  
4 computer data center. The term does not include the state or federal  
5 government or any of their departments, agencies, and institutions;  
6 tribal governments; political subdivisions of this state; or any  
7 municipal, quasi-municipal, public, or other corporation created by  
8 the state or federal government, tribal government, municipality, or  
9 political subdivision of the state. The term also does not include a  
10 lessee of space in an eligible computer data center under (e)(i)  
11 (~~(C)~~) (B)(I) of this subsection (6), if the lessee and lessor are  
12 affiliated and:

13 (i) That space will be used by the lessee to house server  
14 equipment that replaces server equipment previously installed and  
15 operated in that eligible computer data center by the lessor or  
16 another person affiliated with the lessee; or

17 (ii) Prior to May 2, 2012, the primary use of the server  
18 equipment installed in that eligible computer data center was to  
19 provide electronic data storage and data management services for the  
20 business purposes of either the lessor, persons affiliated with the  
21 lessor, or both.

22 (j) "Server equipment" means the computer hardware located in an  
23 eligible computer data center and used exclusively to provide  
24 electronic data storage and data management services for internal use  
25 by the owner or lessee of the computer data center, for clients of  
26 the owner or lessee of the computer data center, or both. "Server  
27 equipment" also includes computer software necessary to operate the  
28 computer hardware. "Server equipment" does not include personal  
29 computers, the racks upon which the server equipment is installed,  
30 and computer peripherals such as keyboards, monitors, printers, and  
31 mice.

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