

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1089

Introduced by

Representatives Owens, Sanford, Streyle, Nathe

Senators Laffen, Campbell

1 A BILL for an Act to create and enact a new section to chapter 57-39.2 of the North Dakota
2 Century Code, relating to a sales tax exemption for enterprise information technology
3 equipment and computer software purchased for use in a qualified data center; to provide for a
4 retroactive effective date; and to provide an expiration date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Sales and use tax exemption for enterprise information technology equipment and**
9 **computer software used in a qualified data center.**

- 10 1. Gross receipts from sales of enterprise information technology equipment and
11 computer software purchased for use by a qualifying business in a qualified data
12 center are exempt from the tax imposed by this chapter. To qualify for the exemption,
13 the enterprise information technology equipment or computer software must be
14 incorporated into or physically located within the qualified data center. Purchases of
15 upgraded or replacement enterprise information technology equipment and computer
16 software for use in a qualified data center are also exempt.
- 17 2. The future owner of a proposed data center must apply to the tax commissioner to be
18 certified as a qualified data center. The exemption provided in this section is limited to
19 the first four facilities approved by the tax commissioner as qualified data centers.
20 Applications must be processed in the order received by the tax commissioner. An
21 applicant must respond to a request for additional information from the tax
22 commissioner within thirty days of the request or the application may no longer be
23 considered.

- 1 3. To receive the exemption at the time of purchase, the qualified business must receive
2 from the tax commissioner a certificate that the enterprise information technology
3 equipment or computer software which the qualified business intends to purchase
4 qualifies for the exemption. If a certificate is not received before the purchase, the
5 qualified business must pay the applicable tax imposed by this chapter and apply to
6 the tax commissioner for a refund.
- 7 4. If the enterprise information technology equipment is purchased or installed by a
8 contractor subject to the tax imposed by this chapter, the qualified business may apply
9 for a refund of the difference between the amount remitted by the contractor and the
10 exemption imposed or allowed by this section. Application for a refund must be made
11 at the times and in the manner directed by the tax commissioner and must include
12 sufficient information to permit the tax commissioner to verify the sales and use taxes
13 paid and the exempt status of the sale or use.
- 14 5. For purposes of this section:
- 15 a. "Computer software" includes software used or loaded at a qualified data center,
16 software maintenance, software licensing, and software customization.
- 17 b. "Enterprise information technology equipment" includes:
- 18 (1) Computer hardware, servers, routers, cooling systems, and cooling towers.
19 (2) Temperature control infrastructure and power infrastructure used for
20 transformation, distribution, or management of electricity used for the
21 maintenance and operation of a qualified data center.
- 22 (3) Exterior dedicated business-owned substations, backup power generation
23 systems, battery systems, or other related infrastructure.
- 24 (4) Racking systems, raised flooring, cabling, or trays necessary for the
25 maintenance and operation of a qualified data center.
- 26 c. "Qualified business" means the owner, operator, or tenants of a qualified data
27 center.
- 28 d. "Qualified data center" means a newly constructed or substantially refurbished
29 facility located in this state:
- 30 (1) Comprised of one or more buildings consisting of an aggregate amount of
31 sixteen thousand square feet [1486 square meters] or more;

- 1 (2) Located on a single parcel or on contiguous parcels;
2 (3) On which construction is completed or which is substantially refurbished
3 after December 31, 2014;
4 (4) Having the following attributes:
5 (a) Uninterrupted power supplies, generator backup, or both;
6 (b) Sophisticated fire suppression and prevention systems; and
7 (c) Enhanced security with security features including permanent security
8 guards; video camera surveillance; an electronic system requiring
9 pass codes, key cards, or biometric scans such as hand scans or
10 retinal or fingerprint recognition to restrict access to selected
11 personnel; or other similar security features; and
12 (5) Certified by the tax commissioner as a qualified data center.
13 e. "Substantially refurbished" means a data center used to house enterprise
14 information technology equipment in which sixteen thousand square feet [1486
15 square meters] or more has been rebuilt, modified, or improved through methods
16 including energy efficiency improvements, building improvements, and the
17 installation of enterprise information technology equipment, environmental
18 controls, and computer software.
19 6. In determining the total square footage of a qualified data center, the square footage
20 of office space, meeting space, mechanical space, and other support facility spaces
21 shall be included if those spaces are used to support the operation of enterprise
22 information technology equipment.
23 7. Qualified data center owners who intend to collocate operators or tenants within the
24 center shall provide the operators or tenants with documentation from the tax
25 commissioner that the center meets the definition of a qualified data center under this
26 section. Operators or tenants shall obtain and submit a copy of the documentation with
27 all applications for sales tax exemption on information technology equipment and
28 computer software purchased for use in the qualified data center.

29 **SECTION 2. EFFECTIVE DATE - RETROACTIVE APPLICATION.** This Act is retroactively
30 effective, and applies to taxable events occurring after December 31, 2014.

- 1 **SECTION 3. EXPIRATION DATE.** This Act is effective through December 31, 2020, and
- 2 after that date is ineffective.