

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 amend and
4 reenact subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code, relating to a
5 use tax exemption for enterprise information technology equipment and computer software
6 purchased for use in a qualified data center; and to provide for a retroactive effective date.

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

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

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

- 12 1. Gross receipts from sales of enterprise information technology equipment and
13 computer software purchased for use in a qualified data center or a qualified
14 refurbished data center are exempt from the tax imposed by this chapter. Purchases of
15 upgraded or replacement enterprise information technology equipment and computer
16 software for use in a qualified data center or a qualified refurbished data center are
17 exempt if the data center facility has:
- 18 a. Uninterrupted power supplies, generator backup power, or both;
 - 19 b. Sophisticated fire suppression and prevention systems; and
 - 20 c. Enhanced security.
- 21 2. To receive the exemption at the time of purchase, the owner of the qualified data
22 center or qualified refurbished data center must receive from the commissioner a
23 certificate that the enterprise information technology equipment or computer software
24 which the owner intends to purchase qualifies for the exemption. If a certificate is not

1 received before the purchase, the owner shall pay the applicable tax imposed by this
2 chapter and apply to the commissioner for a refund.

3 3. If the enterprise information technology equipment or computer software is purchased
4 or installed by a contractor subject to the tax imposed by this chapter, the owner may
5 apply for a refund of the difference between the amount remitted by the contractor and
6 the exemption imposed or allowed by this section. Application for a refund must be
7 made at the times and in the manner directed by the commissioner and must include
8 sufficient information to permit the commissioner to verify the sales and use taxes paid
9 and the exempt status of the sale or use.

10 4. For purposes of this section:

11 a. "Computer software" includes software used or loaded at a qualified data center
12 or qualified refurbished data center, software maintenance, software licensing,
13 and software customization.

14 b. "Enhanced security" means a facility with security features including permanent
15 security guards; video camera surveillance; an electronic system requiring pass
16 codes, key cards, or biometric scans such as hand scans or retinal or fingerprint
17 recognition to restrict access to selected personnel; or other similar security
18 features.

19 c. "Enterprise information technology equipment" includes servers, routers, cooling
20 systems, cooling towers, temperature control infrastructure, and power
21 infrastructure used for transformation, distribution, or management of electricity
22 used for the maintenance and operation of a qualified data center, a refurbished
23 qualified data center, an exterior dedicated business-owned substation, a backup
24 power generation system, a battery system, or other related infrastructure.

25 "Enterprise information technology equipment" also includes any racking
26 systems, cabling, or trays necessary for the maintenance and operation of a
27 qualified data center or qualified refurbished data center.

28 d. "Qualified data center" or "qualified refurbished data center" means a facility
29 located in this state:

30 (1) Comprised of one or more buildings consisting of an aggregate amount of
31 twenty-five thousand square feet [7620 square meters] or more;

- 1 (2) Located on a single parcel or on contiguous parcels;
2 (3) Having a total construction or refurbishment investment in enterprise
3 information technology equipment and computer software of ten million
4 dollars or more over a twenty-four month period; and
5 (4) On which construction is completed or which is substantially refurbished
6 after December 31, 2014.

7 e. "Substantially refurbished" means a data center used to house information
8 technology equipment in which twenty-five thousand square feet [7620 square
9 meters] or more has been rebuilt, modified, or improved through methods
10 including energy efficiency improvements, building improvements, and the
11 installation of enterprise information technology equipment, environmental
12 controls, and computer software.

- 13 5. In determining the total square footage of a qualified data center or a qualified
14 refurbished data center, the the square footage of office space, meeting space,
15 mechanical space, and other support facility spaces shall be included if those spaces
16 are used to support the operation of enterprise information technology equipment.

17 **SECTION 2. AMENDMENT.** Subsection 4 of section 57-40.2-03.3 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 4. The tax imposed by this section does not apply to:
20 a. Production equipment or tangible personal property as authorized or approved
21 for exemption by the tax commissioner under section 57-39.2-04.2;
22 b. Machinery, equipment, or other tangible personal property used to construct an
23 agricultural commodity processing facility as authorized or approved for
24 exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;
25 c. Tangible personal property used to construct or expand a system used to
26 compress, process, gather, or refine gas recovered from an oil or gas well in this
27 state or used to expand or build a gas-processing facility in this state as
28 authorized or approved for exemption by the tax commissioner under section
29 57-39.2-04.5;

- 1 d. Tangible personal property used to construct or expand a qualifying oil refinery as
2 authorized or approved for exemption by the tax commissioner under section
3 57-39.2-04.6;
- 4 e. Tangible personal property used to construct or expand a qualifying facility as
5 authorized or approved for exemption by the tax commissioner under section
6 57-39.2-04.10;
- 7 f. Tangible personal property used to construct or expand a qualifying facility as
8 authorized or approved for exemption by the tax commissioner under section
9 57-39.2-04.11; ~~or~~
- 10 g. Telecommunications infrastructure that is capable of providing
11 telecommunications service as authorized or approved for exemption by the
12 commissioner under chapter 57-39.2; or
- 13 h. Enterprise information technology equipment or computer software purchased for
14 use in a qualified data center or a qualified refurbished data center as authorized
15 or approved for exemption by the commissioner under section 1 of this Act.

16 **SECTION 3. EFFECTIVE DATE - RETROACTIVE APPLICATION.** This Act is retroactively
17 effective, and applies to taxable events occurring after December 31, 2014.