

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; and~~
7 ~~to provide an expiration date.~~

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

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

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

13 1. Gross receipts from sales of enterprise information technology equipment and
14 computer software purchased for use by a qualifying business in a qualified data
15 center ~~or a qualified refurbished data center~~ are exempt from the tax imposed by this
16 chapter. To qualify for the exemption, the enterprise information technology equipment
17 or computer software must be incorporated into or physically located within the
18 qualified data center. Purchases of upgraded or replacement enterprise information
19 technology equipment and computer software for use in a qualified data center ~~or a~~
20 qualified refurbished data center are also exempt if the data center facility has:
21 ~~a. Uninterrupted power supplies, generator backup power, or both;~~
22 ~~b. Sophisticated fire suppression and prevention systems; and~~
23 ~~c. Enhanced security.~~

1 2. The future owner of a proposed data center must apply to the tax commissioner to be
2 certified as a qualified data center. The exemption provided in this section is limited to
3 the first four facilities approved by the tax commissioner as qualified data centers.
4 Applications must be processed in the order received by the tax commissioner. An
5 applicant must respond to a request for additional information from the tax
6 commissioner within thirty days of the request or the application may no longer be
7 considered.

8 ~~2.3.~~ To receive the exemption at the time of purchase, the owner of the qualified data-
9 center or qualified refurbished data center business must receive from the tax
10 commissioner a certificate that the enterprise information technology equipment or
11 computer software which the owner qualified business intends to purchase qualifies for
12 the exemption. If a certificate is not received before the purchase, the owner-
13 shall qualified business must pay the applicable tax imposed by this chapter and apply
14 to the tax commissioner for a refund.

15 ~~3.4.~~ If the enterprise information technology equipment or computer software is purchased
16 or installed by a contractor subject to the tax imposed by this chapter, the
17 owner qualified business may apply for a refund of the difference between the amount
18 remitted by the contractor and the exemption imposed or allowed by this section.
19 Application for a refund must be made at the times and in the manner directed by the
20 tax commissioner and must include sufficient information to permit the tax
21 commissioner to verify the sales and use taxes paid and the exempt status of the sale
22 or use.

23 ~~4.5.~~ For purposes of this section:

- 24 a. "Computer software" includes software used or loaded at a qualified data center
25 or qualified refurbished data center, software maintenance, software licensing,
26 and software customization.
- 27 b. "Enhanced security" means a facility with security features including permanent
28 security guards; video camera surveillance; an electronic system requiring pass
29 codes, key cards, or biometric scans such as hand scans or retinal or fingerprint
30 recognition to restrict access to selected personnel; or other similar security
31 features.

- 1 ~~c.~~ "Enterprise information technology equipment" includes:
- 2 (1) Computer hardware, servers, routers, cooling systems, and cooling towers.
- 3 (2) ~~temperature~~ Temperature control infrastructure, and power infrastructure
- 4 used for transformation, distribution, or management of electricity used for
- 5 the maintenance and operation of a qualified data center. ~~a refurbished~~
- 6 ~~qualified data center, an exterior.~~
- 7 (3) Exterior dedicated business-owned ~~substations~~ substations, ~~a backup power~~
- 8 ~~generation systems~~ systems, ~~a battery systems~~ systems, or other related
- 9 infrastructure. "Enterprise information technology equipment" also includes
- 10 ~~any racking~~
- 11 (4) Racking systems, raised flooring, cabling, or trays necessary for the
- 12 maintenance and operation of a qualified data center ~~or qualified~~
- 13 ~~refurbished data center.~~
- 14 c. "Qualified business" means the owner, operator, or tenants of a qualified data
- 15 center.
- 16 d. "Qualified data center" or "qualified refurbished data center" means a newly
- 17 constructed or substantially refurbished facility located in this state:
- 18 (1) Comprised of one or more buildings consisting of an aggregate amount of
- 19 ~~twenty five~~ sixteen thousand square feet [~~76201,486~~ square meters] or
- 20 more;
- 21 (2) Located on a single parcel or on contiguous parcels;
- 22 (3) ~~Having a total construction or refurbishment investment in enterprise~~
- 23 ~~information technology equipment and computer software of ten million~~
- 24 ~~dollars or more over a twenty four month period; and~~
- 25 ~~(4)~~ On which construction is completed or which is substantially refurbished
- 26 after December 31, 2014.;
- 27 (4) Having the following attributes:
- 28 (a) Uninterrupted power supplies, generator backup, or both;
- 29 (b) Sophisticated fire suppression and prevention systems; and
- 30 (c) Enhanced security with security features including permanent security
- 31 guards; video camera surveillance; an electronic system requiring

pass codes, key cards, or biometric scans such as hand scans or
retinal or fingerprint recognition to restrict access to selected
personnel; or other similar security features; and

(5) Certified by the tax commissioner as a qualified data center.

e. "Substantially refurbished" means a data center used to house enterprise
information technology equipment in which ~~twenty-five~~sixteen thousand square
feet [~~7620~~1,486 square meters] or more has been rebuilt, modified, or improved
through methods including energy efficiency improvements, building
improvements, and the installation of enterprise information technology
equipment, environmental controls, and computer software.

~~5-6.~~ In determining the total square footage of a qualified data center ~~or a qualified-
refurbished data center, the~~ the square footage of office space, meeting space,
mechanical space, and other support facility spaces shall be included if those spaces
are used to support the operation of enterprise information technology equipment.

7. Qualified data center owners who intend to collocate operators or tenants within the
center shall provide the operators or tenants with documentation from the tax
commissioner that the center meets the definition of a qualified data center under this
section. Operators or tenants shall obtain and submit a copy of the documentation with
all applications for sales tax exemption on information technology equipment and
computer software purchased for use in the qualified data center.

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

~~4. The tax imposed by this section does not apply to:~~

~~a. Production equipment or tangible personal property as authorized or approved
for exemption by the tax commissioner under section 57-39.2-04.2;~~

~~b. Machinery, equipment, or other tangible personal property used to construct an
agricultural commodity processing facility as authorized or approved for
exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;~~

~~c. Tangible personal property used to construct or expand a system used to
compress, process, gather, or refine gas recovered from an oil or gas well in this
state or used to expand or build a gas processing facility in this state as~~

- 1 authorized or approved for exemption by the tax commissioner under section
2 ~~57-39.2-04.5;~~
3 ~~d. Tangible personal property used to construct or expand a qualifying oil refinery as~~
4 ~~authorized or approved for exemption by the tax commissioner under section~~
5 ~~57-39.2-04.6;~~
6 ~~e. Tangible personal property used to construct or expand a qualifying facility as~~
7 ~~authorized or approved for exemption by the tax commissioner under section~~
8 ~~57-39.2-04.10;~~
9 ~~f. Tangible personal property used to construct or expand a qualifying facility as~~
10 ~~authorized or approved for exemption by the tax commissioner under section~~
11 ~~57-39.2-04.11; or~~
12 ~~g. Telecommunications infrastructure that is capable of providing~~
13 ~~telecommunications service as authorized or approved for exemption by the~~
14 ~~commissioner under chapter 57-39.2; or~~
15 ~~h. Enterprise information technology equipment or computer software purchased for~~
16 ~~use in a qualified data center or a qualified refurbished data center as authorized~~
17 ~~or approved for exemption by the commissioner under section 1 of this Act.~~

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

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