

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - QUALIFIED DATA CENTER SALES TAX EXEMPTION

Pursuant to North Dakota Century Code Section 54-35-26, created by Senate Bill No. 2057 (2015), a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee every 6 years. The purpose of the review is to ensure economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum is provided to assist in the review of the qualified data center sales tax exemption and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE QUALIFIED DATA CENTER SALES TAX EXEMPTION

Section 57-39.2-04.13 provides a sales and use tax exemption for enterprise information technology equipment and computer software purchased for use in a qualified data center. For purposes of the exemption, a qualified data center is a facility that serves as a centralized repository for the storage, management, and dissemination of electronic data and information, located on a single parcel or contiguous parcels, comprised of one or more buildings consisting of a minimum aggregate amount of 16,000 square feet, and which was newly constructed or substantially refurbished after December 31, 2014. The data center must be certified by the Tax Commissioner as a qualified data center and have an uninterrupted power supply, generator backup, or both; a sophisticated fire suppression and prevention system; and enhanced security features. The exemption, which is limited to the first four facilities approved by the Tax Commissioner as qualified data centers, expires on January 1, 2021.

To qualify for the exemption, the equipment or software must be incorporated into or physically located within the qualified data center. The exemption includes purchases of upgraded or replacement equipment or software. To receive the exemption at the time of purchase, a qualified business must receive a certificate from the Tax Commissioner verifying the enterprise information technology equipment or computer software the business intends to purchase qualifies for the exemption. If a certificate of exemption is not received before the purchase, the qualified business may apply to the Tax Commissioner for a refund of the applicable amount of tax paid. If a contractor purchases or installs the enterprise information technology equipment or computer software, the qualified business may apply for a refund of the amount of sales tax paid by the contractor on qualifying items.

For purposes of the exemption, computer software includes software used or loaded at a qualified data center, software maintenance, software licensing, and software customization. Enterprise information technology equipment includes computer hardware, servers, routers, cooling systems and cooling towers; temperature control and power infrastructure used for transformation, distribution, or management of electricity used for the maintenance and operation of a qualified data center; exterior dedicated business-owned substations, backup power generation systems, battery systems, or other related infrastructure; and racking systems, raised flooring, cabling, or trays necessary for the maintenance and operation of a qualified data center.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING THE QUALIFIED DATA CENTER SALES TAX EXEMPTION

The sales and use tax exemption for enterprise information technology equipment and computer software used in a qualified data center was enacted in 2015 with the passage of House Bill No. 1089. Upon a review of the legislative history for the bill, the perceived goal of the Legislative Assembly in creating the exemption was to help diversify the state's economy by creating a more attractive tax environment to attract data centers to this state. Testimony indicated surrounding states that offer tax incentives have been successful in attracting data centers. The exemption was viewed as enhancing the state's ability to attract data centers when coupled with the state's cold weather and abundant sources of electricity. Testimony also indicated the location of data centers within a community often leads to the expansion of other information technology businesses and data-intensive industries. The estimated fiscal impact of the exemption could not be determined during the 2015 legislative session.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE QUALIFIED DATA CENTER SALES TAX EXEMPTION

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;

4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department;
3. The North Dakota Economic Development Foundation; and
4. The Information Technology Council.