

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 1088** Session of
2019

INTRODUCED BY MUSTELLO, NESBIT, OBERLANDER, LONGIETTI, RYAN,
BERNSTINE, MENTZER, RAPP, BARRAR, MILLARD, MULLINS, JAMES,
METCALFE, RADER, MATZIE, SAINATO, MARSHALL AND GABLER,
APRIL 8, 2019

REFERRED TO COMMITTEE ON FINANCE, APRIL 8, 2019

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," in Computer Data Center Equipment Incentive
11 Program, further providing for definitions and providing for
12 applicability and for sales and use tax exemption; and making
13 editorial changes.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Article XXIX-D of the act of March 4, 1971
17 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
18 by adding a part heading to read:

19 PART I

20 PRELIMINARY PROVISIONS

21 Section 2. Section 2901-D of the act is amended by adding
22 definitions to read:

1 Section 2901-D. Definitions.

2 The following words and phrases when used in this article
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 * * *

6 "Tax exemption." The tax exemption provided for under this
7 article.

8 * * *

9 "Telecommunications provider." A provider of
10 telecommunications services, as defined in 61 Pa. Code § 60.20
11 (relating to telecommunications service).

12 * * *

13 Section 3. Article XXIX-D of the act is amended by adding a
14 part heading immediately before section 2902-D to read:

15 PART II

16 SALES AND USE TAX REFUND PROGRAM

17 Section 4. The act is amended by adding a section to read:

18 Section 2915-D. Applicability.

19 Tax refunds shall not be issued under this part for taxable
20 years beginning after June 30, 2019.

21 Section 5. Article XXIX-D of the act is amended by adding a
22 part to read:

23 PART III

24 SALES AND USE TAX EXEMPTION PROGRAM

25 Section 2921-D. Sales and use tax exemption.

26 (a) State sales and use tax.--The tax imposed by section 202
27 shall not be imposed upon the sale at retail or use of computer
28 data center equipment for installation in a computer data
29 center, purchased by:

30 (1) An owner or operator of a computer data center

1 certified under this article.

2 (2) A qualified tenant of a computer data center
3 certified under this article.

4 (b) Local sales and use tax.--The sale at retail or use of
5 computer data center equipment for installation in a computer
6 data center shall be exempt from a city or county tax on
7 purchase price authorized under Article XXXI-B of the act of
8 July 28, 1953 (P.L.723, No.230), known as the Second Class
9 County Code, and the act of June 5, 1991 (P.L.9, No.6), known as
10 the Pennsylvania Intergovernmental Cooperation Authority Act for
11 Cities of the First Class, if purchased by:

12 (1) An owner or operator of a computer data center
13 certified under this article.

14 (2) A qualified tenant of a computer data center
15 certified under this article.

16 (c) Applicability.--A tax exemption shall apply during the
17 qualification period.

18 (d) Exclusions.--The following do not qualify for a tax
19 exemption:

20 (1) Telecommunications providers' computer data centers
21 that do not have retail or wholesale customers being billed
22 or paying for services, and whose majority of services are
23 for internal services to itself or its subsidiaries.

24 (2) Computer data center equipment used by the computer
25 data center to:

26 (i) generate electricity for resale purposes to a
27 power utility; or

28 (ii) generate, provide or sell more than 5% of its
29 electricity outside of the computer data center.

30 Section 2922-D. Application for certification.

1 To be considered for a certification, an owner or operator of
2 a computer data center shall submit to the department an
3 application on a form prescribed by the department that includes
4 the following:

5 (1) The owner's or operator's name, address and
6 telephone number.

7 (2) The address of the site where the facility is or
8 will be located, including, if applicable, information
9 sufficient to identify the specific portion or portions of
10 the facility comprising the computer data center.

11 (3) An affirmation, signed by an authorized executive
12 representing the owner or operator, that the computer data
13 center is expected to satisfy the certification requirements
14 prescribed in section 2925-D.

15 (4) The department shall begin accepting applications no
16 later than 90 days after the effective date of this section.
17 Section 2923-D. Review of application for certification.

18 (a) General rule.--Within 60 days after receiving a complete
19 and correct application, the department shall review the
20 application and either issue a written certification that the
21 computer data center qualifies for the certification or provide
22 written reasons for its denial.

23 (b) Deemed approval.--Failure of the department to approve
24 or deny an application within 60 days after the date the owner
25 or operator of a computer data center submits the application to
26 the department constitutes certification of the computer data
27 center, and the department shall issue written certification to
28 the owner or operator within 14 days.

29 Section 2924-D. Separation of facilities.

30 (a) Separate certification.--An owner or operator of a

1 computer data center may separate a facility into one or more
2 computer data centers, which may each receive a separate
3 certification, if each computer data center individually meets
4 the requirements prescribed in section 2925-D.

5 (b) Limitation.--A portion of a facility or an article of
6 computer data equipment shall not be deemed to be a part of more
7 than one computer data center.

8 (c) Aggregation.--An owner or operator may aggregate one or
9 more parcels, buildings or condominiums in a facility into a
10 single computer data center if, in the aggregate, the parcels,
11 buildings and condominiums meet the requirements of this
12 article.

13 Section 2925-D. Computer data center certification
14 requirements.

15 (a) General rule.--In order to be certified under this part,
16 a computer data center owner or operator must meet the following
17 requirements:

18 (1) On or before the fourth anniversary of
19 certification, the combined investments made by the owner or
20 operator of the computer data center or the qualified tenant
21 must have created a total minimum investment of:

22 (i) at least \$35,000,000 of new investment if the
23 computer data center is located in a county with a
24 population of 250,000 or fewer individuals; or

25 (ii) at least \$60,000,000 of new investment if the
26 computer data center is located in a county with a
27 population of more than 250,000 individuals.

28 (2) On or before the fourth anniversary of
29 certification, the owner or operator of a computer data
30 center must pay annual compensation of at least \$1,000,000 to

1 employees at the certified computer data center site for each
2 year of certification.

3 (b) Prior application.--A computer data center that has met
4 the eligibility requirements as prescribed under section 2906-D
5 and has, prior to July 1, 2019, submitted an application for
6 certification as prescribed under section 2903-D shall be deemed
7 to meet the certification requirements of this section. The
8 certification shall not be revoked and shall remain in effect
9 for the remainder of the certification period.

10 (c) Limitation.--The department may not certify any computer
11 data center after December 31, 2029.

12 (d) Definition.--As used in this section, the term "new
13 investment" means construction, expansion or build out of data
14 center space at either a new or an existing computer data center
15 on or after July 1, 2019, and the purchase and installation of
16 computer data center equipment, except for items described under
17 paragraph (4) of the definition of "computer data center
18 equipment" in section 2901-D.

19 Section 2926-D. Notification.

20 (a) Requirements satisfied.--On or before the fourth
21 anniversary of the certification of a computer data center, the
22 owner or operator of a computer data center shall notify the
23 department in writing whether the computer data center for which
24 the certification is requested has satisfied the requirements
25 prescribed in section 2925-D.

26 (b) Records.--Until a computer data center satisfies the
27 requirements prescribed in section 2925-D the owner, operator
28 and qualified tenants shall maintain detailed records of all
29 investments created by the computer data center, including costs
30 of buildings and computer data center equipment, and all tax

1 exemptions directly received by the owner, operator or qualified
2 tenant.

3 Section 2927-D. Revocation of certification.

4 (a) Revocation.--If the department determines that the
5 requirements of section 2925-D have not been satisfied, the
6 department may revoke the certification of a computer data
7 center.

8 (b) Appeal.--The owner or operator of the computer data
9 center may appeal the revocation. Appeals filed under this
10 section shall be governed by Article II.

11 (c) Recapture.--If certification is revoked pursuant to this
12 section, the qualification period of any owner, operator or
13 qualified tenant of the computer data center expires, and the
14 department may recapture from the owner, operator or qualified
15 tenant all or part of the tax exemption provided directly to the
16 owner or operator or qualified tenant. The department may give
17 special consideration or allow a temporary exemption from
18 recapture of the tax exemption if there is extraordinary
19 hardship due to factors beyond the control of the owner or
20 operator or qualified tenant. The department may require the
21 owner or operator or qualified tenant to file appropriate
22 amended tax returns in order to reflect any recapture of the tax
23 exemption.

24 Section 2928-D. Guidelines.

25 The department shall publish guidelines and prescribe forms
26 and procedures as necessary for the purposes of this part.

27 Section 2929-D. Confidential information.

28 Proprietary business information contained in the application
29 form described in section 2922-D and the written notice
30 described in section 2926-D, as well as information concerning

1 the identity of a qualified tenant, are confidential and may not
2 be disclosed to the public. The department shall maintain, on
3 its Internet website, a list of the names of computer data
4 centers that have been certified under this part.

5 Section 2930-D. List of tenants.

6 An owner or operator of a computer data center shall provide,
7 to the extent permissible under Federal law, the department with
8 a list of qualified tenants, including the commencement and
9 expiration dates of each qualified tenant's agreement to use or
10 occupy part of the computer data center. The list shall be
11 provided to the department annually, upon request by the
12 department.

13 Section 2931-D. Sale or transfer.

14 Except as provided in section 2927-D, a computer data center
15 retains its certification regardless of a transfer, sale or
16 other disposition, directly or indirectly, of the computer data
17 center.

18 Section 2932-D. Exemption certificate.

19 A computer data center owner, operator or tenant must prepare
20 and deliver a properly executed exemption certificate to a
21 vendor from which the owner, operator or tenant purchases exempt
22 property.

23 Section 6. This act shall take effect as follows:

24 (1) The addition of Part III of Article XXIX-D of the
25 act shall take effect July 1, 2019.

26 (2) The remainder of this act shall take effect
27 immediately.