

Introduced by

Senators Myrdal, Oehlke, Patten

Representatives Damschen, Mock, Monson

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 and use tax exemption for enterprise information technology  
3 equipment and computer software purchased for use in a qualified data center; and to provide  
4 ~~an effective date; and to provide an expiration date~~ for retroactive application.

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 also are exempt.

17 2. The future owner of a proposed data center shall 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 in~~  
20 ~~each region and facilities with capital investments exceeding one hundred fifty million~~  
21 ~~dollars. Applications must be processed in the order received by the tax commissioner.~~  
22 An applicant shall respond to a request for additional information from the tax  
23 commissioner within thirty days of the request or the application may no longer be  
24 considered.

- 1       3. To receive the exemption at the time of purchase, the qualified business shall obtain  
2       from the tax commissioner a certificate that the enterprise information technology  
3       equipment or computer software the qualified business intends to purchase qualifies  
4       for the exemption. If a certificate is not received before the purchase, the qualified  
5       business shall pay the applicable tax imposed by this chapter and apply to the tax  
6       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. "Data center" means a centralized repository for the storage, management, and  
18      dissemination of electronic data and information organized around a particular  
19      body or bodies of knowledge.
- 20      c. "Enterprise information technology equipment" includes:
- 21          (1) Computer hardware, servers, routers, cooling systems, and cooling towers.  
22          (2) Temperature control infrastructure and power infrastructure used for  
23          transformation, distribution, or management of electricity used for the  
24          maintenance and operation of a qualified data center.
- 25          (3) Exterior dedicated business-owned substations, backup power generation  
26          systems, battery systems, or other related infrastructure.
- 27          (4) Racking systems, raised flooring, cabling, or trays necessary for the  
28          maintenance and operation of a qualified data center.
- 29      d. "Qualified business" means the owner, operator, or tenants of a qualified data  
30      center.

1 e. "Qualified data center" means a newly constructed or substantially refurbished  
2 facility located in this state:

3 (1) Comprised of one or more buildings, the primary purpose of which is to  
4 contain a data center, consisting of an aggregate amount of fifteen thousand  
5 square feet [1394 square meters] or more, no fewer than fifty percent of  
6 which is used for data processing;

7 (2) Located on a single parcel or on contiguous parcels;

8 (3) On which construction is completed or which is substantially refurbished  
9 after December 31, 2020;

10 (4) Having the following attributes:

11 (a) Sophisticated fire suppression and prevention systems;

12 (b) Enhanced security with security features including ~~permanent security-~~  
13 ~~guards;~~ video camera surveillance; an electronic system requiring  
14 pass codes, key cards, or biometric scans such as hand scans or  
15 retinal or fingerprint recognition to restrict access to selected  
16 personnel; or other similar security features; and

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

18 f. ~~"Region" has the same meaning provided in section 54-40-1-02.~~

19 ~~g.~~ "Substantially refurbished" means a data center used to house enterprise  
20 information technology equipment in which fifteen thousand square feet [1394  
21 square meters] or more has been rebuilt, modified, or improved through methods  
22 including energy efficiency improvements, building improvements, and the  
23 installation of enterprise information technology equipment, environmental  
24 controls, and computer software.

25 6. In determining the total square footage of a qualified data center, the square footage  
26 of office space, meeting space, mechanical space, and other support facility spaces  
27 must be included if those spaces are used to support the operation of enterprise  
28 information technology equipment.

29 7. Qualified data center owners that intend to collocate operators or tenants within the  
30 center shall provide the operators or tenants with documentation from the tax  
31 commissioner that the center meets the definition of a qualified data center under this

1           section. Operators or tenants shall obtain and submit a copy of the documentation with  
2           all applications for sales tax exemption on information technology equipment and  
3           computer software purchased for use in the qualified data center.

4     ~~**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable events occurring after~~  
5     ~~June 30, 2021.~~

6     ~~**SECTION 3. EXPIRATION DATE.** This Act is effective through June 30, 2030, and after that~~  
7     ~~date is ineffective.~~

8           **SECTION 2. RETROACTIVE APPLICATION.** This Act applies retroactively to purchases  
9     made after December 31, 2020.