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DEPARTMENT OF TREASURY
LANSING

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NOTICE REGARDING DATA CENTER EXEMPTION

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On December 23, 2015, 2015 PA 251 and 252 (the Acts) were signed into law. The Acts are effective beginning January 1, 2016, through December 31, 2035, and exempt the sale, use, or consumption of data center equipment from sales and use tax if it is sold to a qualified data center or colocated business for assembly, use or consumption in the operations of a qualified data center; the exemption also extends to data center equipment sold to a contractor to the extent that the equipment is affixed to or made a structural part of a qualified data center. MCL 205.54ee and MCL 205.94cc.

The Acts will be repealed effective January 2, 2022, if 400 new data center industry related jobs are not created by that date. If not repealed January 2, 2022, the Acts will be repealed effective January 1, 2026, if 1,000 new data center industry related jobs are not created by that date. The Acts' job requirements are industry-wide and include jobs created at qualified data centers, by colocated businesses, and by contractors making improvements to realty that constitute a qualified data center. The Department of Talent and Economic Development is responsible for tracking the jobs requirements of the Acts and reporting the information to the Department of Treasury.

Generally, the Acts exempt certain data center equipment physically placed in a qualified data center. The exemption applies to purchases by qualified data centers or businesses that locate their data center equipment in a qualified data center, defined in the Acts as colocated businesses. Contractors will also benefit from the exemption for construction materials that are used or assembled under the qualified data center's proprietary method of construction, to the extent that the property is affixed to a qualified data center. Qualified data centers are limited to facilities of one or more buildings located in Michigan that are owned or operated by an entity whose primary business is operating a data center for itself and colocated businesses; the entity must also receive 75% or more of its revenue from unaffiliated colocated businesses.¹

More specifically, the Acts provide the following definitions:

¹ Previously, this sentence read "[q]ualified data centers are limited to data centers whose primary business is operating a data center for themselves and colocated businesses; they must also receive 75% or more of their revenue from colocated businesses." This sentence was edited to more accurately reflect the statutory language provided in MCL 205.54ee(4)(d) and MCL 205.94cc(4)(d).

“Qualified data center” means:

1. a facility composed of 1 or more buildings located in this state;
2. which is owned or operated by an entity engaged at that facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing 1 or more colocated businesses to centralize, the storage, processing, management, or dissemination of data of 1 or more other persons who is not an affiliate of the owner or operator of a qualified data center or of a colocated business; and
3. the entity that owns or operates the facility receives 75% or more of its revenue from colocated businesses that are not an affiliate of the owner or operator of the qualified data center.

“Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified person.

“Colocated business” means a person that has entered into a contract with the owner or operator of a qualified data center to use or deploy data center equipment physically located within the qualified data center for a period of 1 or more years.

“Data center equipment” means only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the qualified data center or the business of the qualified data center or a colocated business. Data center equipment also includes any construction materials used or assembled under the qualified data center’s proprietary method for the construction or modification of a qualified data center, including, but not limited to, building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that would otherwise be considered a fixture or related equipment. Data center equipment does not include any equipment owned by a third party that is used to supply the qualified data center’s primary power.

To claim the exemption when purchasing eligible data center equipment, the purchaser may provide a completed Michigan Sales and Use Tax Certificate of Exemption (Form 3372) to its seller. The purchaser, including contractors, must mark the box “Other” (Section 3, box 11 of Form 3372) and fill in “Data Center” on the explanation line. Or, in lieu of an exemption certificate, the seller may obtain and retain other identifying information of the purchaser and the reason for claiming the exemption, in paper or electronic format.

To read the new laws in their entirety, please refer to 2015 PA 251 and 252, MCL 205.54ee and MCL 205.94cc, at www.legislature.mi.gov.