

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2137
(Senators Myrdal, Oehlke, Patten)
(Representatives Damschen, Mock, Monson)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales and use tax exemption for enterprise information technology equipment and computer software purchased for use in a qualified data center; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Gross receipts from sales of enterprise information technology equipment and computer software purchased for use by a qualifying business in a qualified data center are exempt from the tax imposed by this chapter. To qualify for the exemption, the enterprise information technology equipment or computer software must be incorporated into or physically located within the qualified data center. Purchases of upgraded or replacement enterprise information technology equipment and computer software for use in a qualified data center also are exempt.
2. The future owner of a proposed data center shall apply to the tax commissioner to be certified as a qualified data center. An applicant shall respond to a request for additional information from the tax commissioner within thirty days of the request or the application may no longer be considered.
3. To receive the exemption at the time of purchase, the qualified business shall obtain from the tax commissioner a certificate that the enterprise information technology equipment or computer software the qualified business intends to purchase qualifies for the exemption. If a certificate is not received before the purchase, the qualified business shall pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.
4. If the enterprise information technology equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the qualified business may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.
5. For purposes of this section:
 - a. "Computer software" includes software used or loaded at a qualified data center, software maintenance, software licensing, and software customization.
 - b. "Data center" means a centralized repository for the storage, management, and dissemination of electronic data and information organized around a particular body or bodies of knowledge.
 - c. "Enterprise information technology equipment" includes:

- (1) Computer hardware, servers, routers, cooling systems, and cooling towers.
 - (2) Temperature control infrastructure and power infrastructure used for transformation, distribution, or management of electricity used for the maintenance and operation of a qualified data center.
 - (3) Exterior dedicated business-owned substations, backup power generation systems, battery systems, or other related infrastructure.
 - (4) Racking systems, raised flooring, cabling, or trays necessary for the maintenance and operation of a qualified data center.
- d. "Qualified business" means the owner, operator, or tenants of a qualified data center.
- e. "Qualified data center" means a newly constructed or substantially refurbished facility located in this state:
- (1) Comprised of one or more buildings, the primary purpose of which is to contain a data center, consisting of an aggregate amount of fifteen thousand square feet [1394 square meters] or more, no fewer than fifty percent of which is used for data processing;
 - (2) Located on a single parcel or on contiguous parcels;
 - (3) On which construction is completed or which is substantially refurbished after December 31, 2020;
 - (4) Having the following attributes:
 - (a) Sophisticated fire suppression and prevention systems; and
 - (b) Enhanced security with security features including 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.
- f. "Substantially refurbished" means a data center used to house enterprise information technology equipment in which fifteen thousand square feet [1394 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.
6. In determining the total square footage of a qualified data center, the square footage of office space, meeting space, mechanical space, and other support facility spaces must be included if those spaces are used to support the operation of enterprise information technology equipment.
 7. Qualified data center owners that 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.
 8. By January thirty-first of each year, a qualified data center owner shall file with the tax commissioner, on forms and in the manner prescribed by the tax commissioner, a report showing for the previous calendar year:

- a. The amount of the exemption claimed under this section;
 - b. The number of jobs created or retained by the qualified data center; and
 - c. The type and value of any local incentives provided to the qualified data center.
9. Upon receipt of a written request from the chairman of the legislative management or the chairman of a standing committee of the legislative assembly, the tax commissioner shall disclose any information described under subsection 8. This subsection does not authorize disclosure of the qualified data center owner's name, social security number, federal employer identification number, address, or any other information prohibited from disclosure under chapter 57-38.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2137.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 72 Nays 20 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State