



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 616 and 617 (as enacted)
Sponsor: Senator Tonya Schuitmaker (S.B. 616)
Senator Peter MacGregor (S.B. 617)
Senate Committee: Michigan Competitiveness
House Committee: Tax Policy

PUBLIC ACTS 251 & 252 of 2015

Date Completed: 1-25-16

CONTENT

Senate Bills 616 and 617 amended the General Sales Tax Act and the Use Tax Act, respectively, to establish sales and use tax exemptions for the sale of data center equipment to the owner or operator of a qualified data center or a colocated business for assembly, use, or consumption in the data center operations, or to a person engaged in real estate construction or improvement to the extent the equipment is to be affixed to or made a structural part of a qualified data center.

The exemptions apply beginning January 1, 2016, through December 31, 2035, although at least 400 data center industry or industry-related jobs must be created for the exemptions to continue beyond January 1, 2022, and at least 1,000 such jobs must be created for the exemptions to continue after January 1, 2026.

Each bill requires the Legislature annually to appropriate sufficient funds from the State General Fund to the State School Aid Fund to fully compensate for any loss of revenue to that Fund resulting from the bill's enactment.

Each bill took effect on December 23, 2015.

Exemptions; Job Creation Requirements

Subject to the requirements for job creation, beginning January 1, 2016, through December 31, 2035, Senate Bill 616 exempts from the sales tax a sale of data center equipment to the owner or operator of a qualified data center or a colocated business for assembly, use, or consumption in the operations of the qualified data center or a sale of data center equipment to a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the data center equipment is to be affixed to or made a structural part of a qualified data center. Under the same circumstances, Senate Bill 617 provides that the use tax does not apply to the storage, use, or consumption of data center equipment sold to the owner or operator of a qualified data center or a colocated business or to a person engaged in the business of constructing, altering, repairing, or improving real estate for others.

Each exemption will continue to apply after January 1, 2022, only if the numbers gathered by the local economic development corporations are certified and reported to the Department of Talent and Economic Development (TED) and subsequently forwarded to the Department of Treasury, and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in Michigan at least 400 data center industry jobs or data center industry-related jobs, or a combination of both, since January 1, 2016. By April 1, 2022, TED must submit to the

Governor, the Senate Majority Leader, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House, a report related to the number of such jobs that have been established since January 1, 2016.

The exemptions will continue to apply after January 1, 2026, only if the numbers gathered by the local economic development corporations are certified and reported to TED and subsequently forwarded to the Department of Treasury, and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in Michigan at least 1,000 data center industry jobs and/or data center industry-related jobs since January 1, 2016. By April 1, 2026, TED must report to the individual listed above regarding the number of such jobs that have been established since January 1, 2016.

Definitions

Both bills define "qualified data center" as a facility that is composed of one or more buildings located in Michigan and is owned or operated by an entity engaged at the facility in operating, managing, or maintaining a group of networked computers or networked facilities for the purpose of centralizing, or allowing one or more colocated businesses to centralize, the storage, processing, management, or dissemination of data of at least one other person who is not an affiliate of the owner or operator of a qualified data center or of a colocated business and that entity receives 75% or more of its revenue from colocated businesses that are not affiliates of the owner or operator of the qualified data center.

"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. The term 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 building materials, infrastructure, machinery, wiring, cabling, devices, tools, and equipment that otherwise would 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 data center's primary power.

"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 data center for one or more years. "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.

MCL 205.4ee & 205.62 (S.B. 616)
205.94cc & 205.104b (S.B. 617)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Between FY 2015-16 and FY 2034-35, the bills will reduce General Fund revenue as well as local unit revenue by an unknown, although potentially significant, amount that will depend on the number of affected taxpayers and their specific characteristics, but likely will total at least \$11.0 million per year, assuming all eligible taxpayers claim the exemptions, and may be more if the bills lead to additional economic activity in Michigan. The bills apply to existing taxpayers, of which at least 43 firms are expected to qualify, although the sector that includes data centers includes approximately 331 firms. Another 1,253 smaller nonemployer businesses potentially will qualify under the bills, although there is insufficient information

regarding these firms to include them in the fiscal impact, and any impact from these firms is likely to be minimal.

To the extent that the bills attract additional firms to the State, the revenue loss under the bills will be greater. One firm identified in the media as considering expansion into Michigan could increase the revenue loss under the bills by a significant amount depending on the specific characteristics of the firm. Several media reports have indicated the expansion could total \$5.0 billion, but would take approximately a decade to complete. However, any revenue loss depends on whether the investment would occur absent the bills. To the extent the investment would not occur without the bills, the revenue loss will represent the revenue foregone as a result of the bills' exemptions. If the expansions involved \$100.0 million of investment each year during the 10-year construction period, 75% of which would be subject to sales and/or use tax, the revenue loss under the bills would increase by approximately \$4.6 million per year. In total, assuming more than \$5.0 billion investment of which 75% would otherwise be subject to sales and use taxes, the bills would reduce revenue by \$225.0 million if the investment were completed by December 31, 2035.

The relative impact across funds will depend on the portion of revenue loss under the sales tax compared to the use tax. Use tax revenue is split between the General Fund and the School Aid Fund. Use tax revenue at a rate of 2% is deposited into the School Aid Fund, while the General Fund receives any remaining use tax after the local community stabilization share is subtracted to fund personal property tax reimbursements to local units of government. Approximately 73.3% of sales tax revenue is directed to the School Aid Fund, 10% is directed to constitutional revenue sharing, and the remainder goes to the General Fund. The bills' enacting sections require the Legislature to appropriate money from the General Fund to replace any revenue reduction experienced by the School Aid Fund due to the provisions of the bills. Assuming that 40% of the bills' impact falls under the sales tax, the bills will reduce revenue by \$11.0 million in fiscal year (FY) 2015-16, \$15.0 million in FY 2016-17, and \$16.0 million in FY 2017-18; of these amounts, School Aid Fund reimbursements will total \$5.4 million, \$7.4 million, and \$7.9 million, respectively. As a result, assuming that the reimbursement is appropriated, the bills will lower General Fund revenue by \$10.6 million in FY 2015-16, \$14.4 million in FY 2016-17, and \$15.5 million in FY 2017-18, and will reduce local unit revenue by \$400,000 in FY 2015-16, and \$600,000 in both FY 2016-17 and FY 2017-18.

The additional economic activity would require additional reimbursements that could total \$111.0 million if the full investment occurred before December 31, 2035, and thus would lower General Fund revenue by \$202.5 million and local unit revenue by \$22.5 million.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.