

Act No. 251
Public Acts of 2015
Approved by the Governor
December 23, 2015
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December 23, 2015
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Senators Schuitmaker, Hildenbrand and MacGregor

ENROLLED SENATE BILL No. 616

AN ACT to amend 1933 PA 167, entitled “An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act,” by amending section 12 (MCL 205.62), as amended by 2008 PA 438, and by adding section 4ee.

The People of the State of Michigan enact:

Sec. 4ee. (1) Subject to subsections (2) and (3), beginning January 1, 2016 through December 31, 2035, 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 is exempt from the tax under this act.

(2) The exemption under this section only continues to apply after January 1, 2022, if the numbers gathered by the local economic development corporations are certified and reported to the department of talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 400 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2022 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(3) The exemption under this section only continues to apply after January 1, 2026, if the numbers gathered by the local economic development corporations are certified and reported to the department of talent and economic development and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data centers, collectively, have, in aggregate, established in this state at least 1,000 data center industry jobs or data center industry related jobs, or a combination of both, since January 1, 2016. The department of talent and economic development shall submit a report no later than April 1, 2026 related to the number of data center industry jobs or data center industry related jobs that have been established since January 1, 2016 to the speaker and minority leader of the house of representatives, the majority and minority leaders of the senate, and the governor.

(4) As used in this section:

(a) “Affiliate” means a person that directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(b) “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.

(c) “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.

(d) “Qualified data center” means a facility composed of 1 or more buildings located in this state and the facility 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 that entity 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.

Sec. 12. (1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred.

(2) A seller shall use a standard format for claiming an exemption electronically as adopted by the governing board under the streamlined sales and use tax agreement.

(3) A purchaser is not required to provide a signature to claim an exemption under this act unless a paper exemption form is used.

(4) A seller shall maintain a proper record of all exempt transactions and shall provide the record if requested by the department.

(5) A seller who complies with the requirements of this section is not liable for the tax if a purchaser improperly claims an exemption. A purchaser who improperly claims an exemption is liable for the tax due under this act. This subsection does not apply if a seller fraudulently fails to collect the tax, solicits a purchaser to make an improper claim for exemption, or accepts an exemption form when the purchaser claims an entity-based exemption if both of the following circumstances occur:

(a) The subject of the transaction sought to be covered by the exemption form is actually received by the purchaser at a location operated by the seller.

(b) The state in which that location operated by the seller is located provides an exemption form that clearly and affirmatively indicates that the claimed exemption is not available in that state.

(6) A seller who obtains a fully completed exemption form or captures the relevant data elements as outlined in this section within 120 days after the date of sale is not liable for the tax.

(7) If the seller has not obtained an exemption form or all relevant data elements, the seller may either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption form from the purchaser, by the later of the following:

(a) 120 days after a request by the department.

(b) The date an assessment becomes final.

(c) The denial of a claim for refund.

(d) In the instance of a credit audit, the issuance of an audit determination letter or informal conference decision and order of determination.

(e) The date of a final order of the court of claims or the Michigan tax tribunal, as applicable, with respect to an assessment, order, or decision of the department.

(8) The department may, in its discretion, allow a seller additional time to comply with subsection (7).

(9) A seller is not liable for the tax under this act if the seller obtains a blanket exemption form for a purchaser with which the seller has a recurring business relationship. Renewals of blanket exemption forms or updates of exemption form information or data elements are not required if there is a recurring business relationship between the seller and the purchaser. For purposes of this section, a recurring business relationship exists when a period of not more than 12 months elapses between sales transactions.

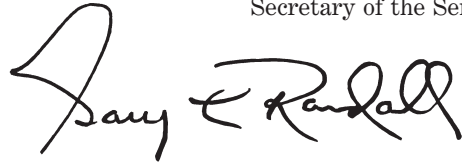
(10) A certified service provider shall be considered a seller under this section. As used in this section, "certified service provider" means that term as defined in section 25 of the streamlined sales and use tax administration act, 2004 PA 174, MCL 205.825.

Enacting section 1. The legislature shall annually appropriate sufficient funds from the state general fund to the state school aid fund created in section 11 of article IX of the state constitution of 1963 to fully compensate for any loss of revenue to the state school aid fund resulting from the enactment of this amendatory act.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

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Governor