15.0383.01001

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1089

Introduced by

Representatives Owens, Sanford, Streyle, Nathe

Senators Laffen, Campbell

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 tax exemption for enterprise information technology

3 equipment and computer software purchased for use in a qualified data center; to amend and

4 reenact subsection 4 of section 57-40.2-03.3 of the North Dakota Century Code, relating to a

5 use tax exemption for enterprise information technology equipment and computer software

6 purchased for use in a qualified data center; and to provide for a retroactive effective date; and

7 to provide an expiration date.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9   **SECTION 1.** A new section to chapter 57-39.2 of the North Dakota Century Code is created

10 and enacted as follows:

11   **Sales and use tax exemption for enterprise information technology equipment and**

12 **computer software used in a qualified data center.**

13   1.   Gross receipts from sales of enterprise information technology equipment and

14   computer software purchased for use by a qualifying business in a qualified data

15   center or a qualified refurbished data center are exempt from the tax imposed by this

16   chapter. To qualify for the exemption, the enterprise information technology equipment

17   or computer software must be incorporated into or physically located within the

18   qualified data center. Purchases of upgraded or replacement enterprise information

19   technology equipment and computer software for use in a qualified data center or a

20   qualified refurbished data center are also exempt if the data center facility has:

21   a.   Uninterrupted power supplies, generator backup power, or both;

22   b.   Sophisticated fire suppression and prevention systems; and

23   c.   Enhanced security.

1   2.   The future owner of a proposed data center must apply to the tax commissioner to be

2   certified as a qualified data center. The exemption provided in this section is limited to

3   the first four facilities approved by the tax commissioner as qualified data centers.

4   Applications must be processed in the order received by the tax commissioner. An

5   applicant must respond to a request for additional information from the tax

6   commissioner within thirty days of the request or the application may no longer be

7   considered.

8   2.3.   To receive the exemption at the time of purchase, the owner of the qualified data

9   center or qualified refurbished data centerbusiness must receive from the tax

10   commissioner a certificate that the enterprise information technology equipment or

11   computer software which the ownerqualified business intends to purchase qualifies for

12   the exemption. If a certificate is not received before the purchase, the owner

13   shallqualified business must pay the applicable tax imposed by this chapter and apply

14   to the tax commissioner for a refund.

15   3.4.   If the enterprise information technology equipment or computer software is purchased

16   or installed by a contractor subject to the tax imposed by this chapter, the

17   ownerqualified business may apply for a refund of the difference between the amount

18   remitted by the contractor and the exemption imposed or allowed by this section.

19   Application for a refund must be made at the times and in the manner directed by the

20   tax commissioner and must include sufficient information to permit the tax

21   commissioner to verify the sales and use taxes paid and the exempt status of the sale

22   or use.

23   4.5.   For purposes of this section:

24   a.   "Computer software" includes software used or loaded at a qualified data center

25   or qualified refurbished data center, software maintenance, software licensing,

26   and software customization.

27   b.   "Enhanced security" means a facility with security features including permanent

28   security guards; video camera surveillance; an electronic system requiring pass

29   codes, key cards, or biometric scans such as hand scans or retinal or fingerprint

30   recognition to restrict access to selected personnel; or other similar security

31   features.

1   c.   "Enterprise information technology equipment" includes:

2   (1)   Computer hardware, servers, routers, cooling systems, and cooling towers,.

3   (2)   temperatureTemperature control infrastructure, and power infrastructure

4   used for transformation, distribution, or management of electricity used for

5   the maintenance and operation of a qualified data center, a refurbished

6   qualified data center, an exterior.

7   (3)   Exterior dedicated business-owned substationsubstations, a backup power

8   generation systemsystems, a battery systemsystems, or other related

9   infrastructure. "Enterprise information technology equipment" also includes

10   any racking

11   (4)   Racking systems, raised flooring, cabling, or trays necessary for the

12   maintenance and operation of a qualified data center or qualified

13   refurbished data center.

14   c.   "Qualified business" means the owner, operator, or tenants of a qualified data

15   center.

16   d.   "Qualified data center" or "qualified refurbished data center" means a newly

17   constructed or substantially refurbished facility located in this state:

18   (1)   Comprised of one or more buildings consisting of an aggregate amount of

19   twenty-fivesixteen thousand square feet [76201,486 square meters] or

20   more;

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

22   (3)   Having a total construction or refurbishment investment in enterprise

23   information technology equipment and computer software of ten million

24   dollars or more over a twenty-four month period; and

25   (4)   On which construction is completed or which is substantially refurbished

26   after December 31, 2014.;

27   (4)   Having the following attributes:

28   (a)   Uninterrupted power supplies, generator backup, or both;

29   (b)   Sophisticated fire suppression and prevention systems; and

30   (c)   Enhanced security with security features including permanent security

31   guards; video camera surveillance; an electronic system requiring

1   pass codes, key cards, or biometric scans such as hand scans or

2   retinal or fingerprint recognition to restrict access to selected

3   personnel; or other similar security features; and

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

5   e.   "Substantially refurbished" means a data center used to house enterprise

6   information technology equipment in which twenty-fivesixteen thousand square

7   feet [76201,486 square meters] or more has been rebuilt, modified, or improved

8   through methods including energy efficiency improvements, building

9   improvements, and the installation of enterprise information technology

10   equipment, environmental controls, and computer software.

11   5.6.   In determining the total square footage of a qualified data center or a qualified

12   refurbished data center, the the square footage of office space, meeting space,

13   mechanical space, and other support facility spaces shall be included if those spaces

14   are used to support the operation of enterprise information technology equipment.

15   7.   Qualified data center owners who intend to collocate operators or tenants within the

16   center shall provide the operators or tenants with documentation from the tax

17   commissioner that the center meets the definition of a qualified data center under this

18   section. Operators or tenants shall obtain and submit a copy of the documentation with

19   all applications for sales tax exemption on information technology equipment and

20   computer software purchased for use in the qualified data center.

21   **SECTION 2. AMENDMENT.** Subsection 4 of section 57-40.2-03.3 of the North Dakota

22 Century Code is amended and reenacted as follows:

23   4.   The tax imposed by this section does not apply to:

24   a.   Production equipment or tangible personal property as authorized or approved

25   for exemption by the tax commissioner under section 57-39.2-04.2;

26   b.   Machinery, equipment, or other tangible personal property used to construct an

27   agricultural commodity processing facility as authorized or approved for

28   exemption by the tax commissioner under section 57-39.2-04.3 or 57-39.2-04.4;

29   c.   Tangible personal property used to construct or expand a system used to

30   compress, process, gather, or refine gas recovered from an oil or gas well in this

31   state or used to expand or build a gas-processing facility in this state as

1   authorized or approved for exemption by the tax commissioner under section

2   57-39.2-04.5;

3   d. Tangible personal property used to construct or expand a qualifying oil refinery as

4   authorized or approved for exemption by the tax commissioner under section

5   57-39.2-04.6;

6   e. Tangible personal property used to construct or expand a qualifying facility as

7   authorized or approved for exemption by the tax commissioner under section

8   57-39.2-04.10;

9   f. Tangible personal property used to construct or expand a qualifying facility as

10   authorized or approved for exemption by the tax commissioner under section

11   57-39.2-04.11; or

12   g. Telecommunications infrastructure that is capable of providing

13   telecommunications service as authorized or approved for exemption by the

14   commissioner under chapter 57-39.2; or

15   h. Enterprise information technology equipment or computer software purchased for

16   use in a qualified data center or a qualified refurbished data center as authorized

17   or approved for exemption by the commissioner under section 1 of this Act.

18   **SECTION 2. EFFECTIVE DATE - RETROACTIVE APPLICATION.** This Act is retroactively

19 effective, and applies to taxable events occurring after December 31, 2014.

20   **SECTION 3. EXPIRATION DATE.** This Act is effective through December 31, 2020, and

21 after that date is ineffective.