



North Dakota Legislative Council

Prepared for the Tax Reform and Relief Advisory Committee
LC# 27.9096.01000
September 2025

ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - QUALIFIED DATA CENTER SALES TAX EXEMPTION

Pursuant to North Dakota Century Code Section 54-35-26, created by Senate Bill No. 2057 (2015), a variety of economic development tax incentives must be reviewed by a Legislative Management interim committee during each 6-year review period. The purpose of the review is to ensure economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum is provided to assist in the review of the qualified data center sales tax exemption and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE QUALIFIED DATA CENTER SALES TAX EXEMPTION

Section 57-39.2-04.17 provides a sales and use tax exemption for enterprise information technology equipment and computer software purchased for use in a qualified data center. For purposes of the exemption, a qualified data center is a facility that serves as a centralized repository for the storage, management, and dissemination of electronic data and information, located on a single parcel or contiguous parcels, comprised of one or more buildings consisting of a minimum aggregate amount of 15,000 square feet, of which no fewer than 50 percent is used for data processing, and which was newly constructed or substantially refurbished after December 31, 2020. The data center must be certified by the Tax Commissioner as a qualified data center and have a sophisticated fire suppression and prevention system and enhanced security features.

To qualify for the exemption, the equipment or software must be incorporated into or physically located within the qualified data center. The exemption includes purchases of upgraded or replacement equipment or software. To receive the exemption at the time of purchase, a qualified business must receive a certificate from the Tax Commissioner verifying the enterprise information technology equipment or computer software the business intends to purchase qualifies for the exemption. If a certificate of exemption is not received before the purchase, the qualified business may apply to the Tax Commissioner for a refund of the applicable amount of tax paid. If a contractor purchases or installs the enterprise information technology equipment or computer software, the qualified business may apply for a refund of the amount of sales tax paid by the contractor on qualifying items.

For purposes of the exemption, computer software includes software used or loaded at a qualified data center, software maintenance, software licensing, and software customization. Enterprise information technology equipment includes computer hardware, servers, routers, cooling systems, and cooling towers; temperature control and power infrastructure used for transformation, distribution, or management of electricity used for the maintenance and operation of a qualified data center; exterior dedicated business-owned substations, backup power generation systems, battery systems, or other related infrastructure; and racking systems, raised flooring, cabling, or trays necessary for the maintenance and operation of a qualified data center.

Section 57-39.2-04.17 also requires each qualified data center owner to file a report with the Tax Commissioner containing information from the preceding calendar year, including the amount of the exemption claimed, the number of jobs created or retained by the qualified data center, and the type and value of any local incentives provided to the qualified data center. The Tax Commissioner is required to disclose the information reported by the qualified data center owners upon a written request from the

Chairman of the Legislative Management or chairman of a standing committee of the Legislative Assembly.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING THE QUALIFIED DATA CENTER SALES TAX EXEMPTION

Provisions regarding a sales and use tax exemption for enterprise information technology equipment and computer software used in a qualified data center were originally enacted in 2015 with the passage of House Bill No. 1089. This provision was codified as Section 57-39.2-04.13. Upon a review of the legislative history for the bill, the perceived goal of the Legislative Assembly in creating the exemption was to help diversify the state's economy by creating a more attractive tax environment to attract data centers to the state. Testimony indicated surrounding states that offer tax incentives have been successful in attracting data centers. The exemption was viewed as enhancing the state's ability to attract data centers when coupled with the state's cold weather and abundant sources of electricity. Testimony also indicated the location of data centers within a community often leads to the expansion of other information technology businesses and data-intensive industries. The estimated fiscal impact of the exemption could not be determined during the 2015 legislative session. House Bill No. 1089 included a sunset provision indicating the exemption was effective through December 31, 2020, and after that date was ineffective. No additional legislation was passed to extend the qualified data center sales tax exemption in Section 57-39.2-04.13 prior to the expiration date.

Following the expiration of Section 57-39.2-04.13, provisions regarding a qualified data center sales tax exemption were revisited in Senate Bill No. 2137 (2021) and ultimately passed in a form substantially similar to the exemption under Section 57-39.2-04.13. The reenacted exemption, codified as Section 57-39.2-04.17, provides a similar sales and use tax exemption for enterprise information technology equipment and computer software purchased for use in a qualified data center. However, distinctions exist between the exemption under expired Section 57-39.2-04.13 and the exemption provided in Section 57-39.2-04.17. Key distinctions include the removal of the limitation restricting the exemption to the first four facilities certified by the Tax Commissioner, a reduction in the minimum square footage required for a qualified data center from 16,000 to 15,000 square feet, with no fewer than 50 percent used for data processing, and the elimination of requirements for uninterrupted power supplies, generator backup systems, and permanent security guards. The newly enacted provision also introduced a reporting requirement, which requires data center owners to annually submit to the Tax Commissioner information from the preceding calendar year, including the amount of the exemption claimed, the number of jobs created or retained, and the type and value of any local incentives provided to the qualified data center. Upon request by the Chairman of the Legislative Management or chairman of a standing committee of the Legislative Assembly, the Tax Commissioner is required to disclose the information.

Upon a review of the legislative history for Senate Bill No. 2137 (2021), the Legislative Assembly's perceived goals related to the reenactment of the sales and use tax exemption for enterprise information technology equipment and computer software purchased for use in a qualified data center were consistent with the Legislative Assembly's goals when establishing the former version of the exemption under Section 57-39.2-04.17. The Legislative Assembly emphasized the exemption was intended as a tool to attract data centers to the state. The exemption was viewed as a way to diversify the state's economy, generate employment opportunities, and add to the tax base. Testimony indicated that compared to the incentive under Section 57-39.2-04.13, the more recently enacted provision under Section 57-39.2-04.17 includes slight modifications to improve the incentive's effectiveness and create additional opportunity in the state.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE QUALIFIED DATA CENTER SALES TAX EXEMPTION

To effectively analyze the incentive, the committee may wish to collect data pertaining to the following items:

1. The number of claimants;
2. The fiscal impact of the incentive;

3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive; and
5. Benefits that flow to out-of-state concerns resulting from the incentive.

The committee also may wish to solicit testimony from:

1. The Department of Commerce;
2. The Tax Department;
3. The Economic Development Association of North Dakota; and
4. Representatives of the technology and energy industries.