

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0096.01 Nicole Myers x4326

HOUSE BILL 15-1158

HOUSE SPONSORSHIP

DelGrosso and Pabon, Saine, Williams, Kraft-Tharp, Moreno, Joshi

SENATE SPONSORSHIP

Holbert,

House Committees

Business Affairs and Labor
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A REFUND OF THE STATE SALES AND USE TAX PAID FOR**
102 **INFORMATION TECHNOLOGY EQUIPMENT THAT IS USED IN**
103 **CERTAIN DATA CENTERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Beginning January 1, 2016, the bill allows a sales and use tax refund to the owner, operator, or tenant of a facility that is a qualified data center or a qualified refurbished data center for the state sales or use tax paid on information technology equipment (IT equipment) that is used and maintained in the qualified data center or qualified refurbished data

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

center for at least one year. The refund also applies to IT equipment that is purchased to replace or upgrade IT equipment and IT equipment that is relocated to the state.

The bill specifies the criteria for a facility to be a qualified data center or a qualified refurbished data center, including the following:

- ! The facility and the related premises is primarily used to house and operate IT equipment and has certain fire suppression, climate control, and security systems;
- ! The facility is located in the state;
- ! The facility is comprised of one or more buildings that consist in the aggregate of at least 25,000 square feet;
- ! The facility is located on a single parcel or on contiguous or adjacent parcels of land;
- ! For a qualified data center, the total cost of constructing the facility and the investment in IT equipment for the facility is at least \$40 million within a 5-year period that begins not earlier than January 1, 2011; and
- ! For a qualified refurbished data center, all or a portion of the facility has been substantially refurbished, and the total cost of refurbishing the facility and the investment in IT equipment for the refurbished facility is at least \$20 million within a 2-year period that begins not earlier than January 1, 2014.

The owner, operator, or tenant of a facility that wants to claim the refund is required to submit an affidavit to the Colorado office of economic development (office), along with supporting documentation required by the office, stating that the facility satisfies the criteria to be a qualified data center or a qualified refurbished data center or that the tenant satisfies the criteria to be a qualified tenant.

The office is required to determine whether a facility is a qualified data center or a qualified refurbished data center and whether a tenant is a qualified tenant and to notify the department of revenue. Upon such determination, the office is required to issue a certification to the owner, operator, or tenant of the facility stating that the owner, operator, or tenant may claim a refund for the state sales and use tax paid on IT equipment that is used and maintained in the facility.

If the office determines that a facility is a qualified data center or a qualified refurbished data center, the facility retains its qualified status for 20 years from the date of the first investment in the facility for the purpose of becoming a qualified data center or a qualified refurbished data center. In addition, if a qualified data center or a qualified refurbished data center makes a later investment that satisfies the criteria to be a qualified refurbished data center, the facility's 20-year qualified status restarts as of the date of the new qualifying investment.

To claim the refund allowed by the bill, the owner or operator of

a qualified data center or a qualified refurbished data center or a qualified tenant must submit to the department of revenue a refund application, a copy of its certification from the office, and proof of payment of state sales and use tax in a form and manner to be determined by the department.

In the first year that a facility is certified as a qualified data center or a qualified refurbished data center, the owner, operator, or tenant of the facility must include in its application all of the IT equipment purchases that it made and all IT equipment that it relocated to the state during the 5-year or 2-year period, as applicable, during which the facility was making investments to become a qualified data center or a qualified refurbished data center and for which the refund is claimed. A refund is not allowed for any state sales or use tax paid for IT equipment prior to January 1, 2016.

The office is required to submit an annual report to the general assembly regarding the economic benefits of the state sales and use tax exemption on IT equipment used and maintained in qualified data centers or qualified refurbished data centers. To assist the office in preparing the report, each owner, operator, and tenant of a qualified data center or qualified refurbished data center is required to submit an annual report to the office with information requested by the office.

The department of revenue is required to promulgate rules for the implementation of the sales and use tax refund.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 8 to article
3 26 of title 39 as follows:

4 **PART 8**

5 **SALES AND USE TAX REFUND FOR INFORMATION**

6 **TECHNOLOGY EQUIPMENT IN A QUALIFIED DATA CENTER**

7 **39-26-801. Legislative declaration.** (1) THE GENERAL ASSEMBLY

8 HEREBY FINDS AND DECLARES THAT:

9 (a) COLORADO'S ADVANCED TECHNOLOGY INDUSTRY DIRECTLY
10 PROVIDES AND CONTRIBUTES BILLIONS OF DOLLARS TO THE STATE'S
11 ECONOMY;

12 (b) AS A COMPONENT OF THAT INDUSTRY, DATA CENTERS ARE AN

1 IMPORTANT ASSET AND CONTRIBUTE A SIGNIFICANT ECONOMIC BENEFIT TO
2 THE STATE, INCLUDING HIGH-END INFORMATION TECHNOLOGY,
3 CONSULTING, AND CONSTRUCTION EMPLOYMENT;

4 (c) THESE ASSETS, ONCE BUILT, ARE A KEY COMPONENT OF A
5 COMPANY'S OVERALL OPERATING ENVIRONMENT AND CAN CREATE A
6 LONG-TERM INVESTMENT IN A COMMUNITY;

7 (d) STUDIES INDICATE THAT THE STATE WOULD BENEFIT
8 SIGNIFICANTLY FROM STATE-IMPLEMENTED INCENTIVES DESIGNED TO
9 STIMULATE PRIVATE SECTOR INDUSTRY GROWTH;

10 (e) DATA CENTERS CAN BE A SIGNIFICANT SOURCE OF NEW
11 REVENUE ALONG WITH TYPICAL ECONOMIC GROWTH DRIVERS SUCH AS
12 MANUFACTURING, HEADQUARTERS, AND DISTRIBUTION CENTERS; AND

13 (f) SINCE 2005, APPROXIMATELY SEVENTEEN STATES HAVE PASSED
14 LEGISLATION TO PROVIDE CUSTOMIZED INCENTIVES FOR DATA CENTERS,
15 AND THOSE STATES ARE ACTIVELY RECRUITING DATA CENTER
16 INVESTMENTS.

17 (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT
18 ENACTING A TAX INCENTIVE TO ENCOURAGE THE EXPANSION OF CURRENT
19 DATA CENTER BUSINESSES, ENCOURAGE NEW DATA CENTER BUSINESSES
20 TO LOCATE TO THE STATE, AND INVIGORATE THE STATE'S CURRENT
21 ADVANCED TECHNOLOGY INDUSTRY'S BUSINESS ACTIVITIES IS SOUND
22 PUBLIC POLICY.

23 **39-26-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE
24 CONTEXT OTHERWISE REQUIRES:

25 (1) "CO-LOCATION FACILITY" MEANS A FACILITY WHERE
26 EQUIPMENT, SPACE, OR BANDWIDTH ARE AVAILABLE FOR LEASE OR
27 RENTAL TO TENANTS.

1 (2) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

2 (3) "FACILITY" MEANS A FACILITY AND THE RELATED PREMISES
3 THAT IS USED TO HOUSE AND OPERATE INFORMATION TECHNOLOGY
4 EQUIPMENT AND THAT HAS THE FOLLOWING CHARACTERISTICS:

5 (a) SOPHISTICATED FIRE SUPPRESSION AND PREVENTION SYSTEMS
6 AND ENHANCED SYSTEMS TO CONTROL THE CLIMATE WITHIN THE
7 FACILITY; AND

8 (b) ENHANCED SECURITY MEASURES. A FACILITY IS CONSIDERED
9 TO HAVE ENHANCED SECURITY IF IT HAS RESTRICTED ACCESS TO SELECTED
10 PERSONNEL, PERMANENT SECURITY GUARDS, VIDEO CAMERA
11 SURVEILLANCE, AN ELECTRONIC SYSTEM REQUIRING PASS CODES,
12 KEYCARDS, OR BIOMETRIC SCANS, SUCH AS HAND SCANS OR RETINAL OR
13 FINGERPRINT RECOGNITION, OR SIMILAR ENHANCED SECURITY FEATURES.

14 (4) (a) "INFORMATION TECHNOLOGY EQUIPMENT" MEANS
15 EQUIPMENT THAT IS PHYSICALLY LOCATED AT A QUALIFIED DATA CENTER
16 OR A QUALIFIED REFURBISHED DATA CENTER AND THAT IS NECESSARY FOR
17 THE MAINTENANCE AND DIRECT OPERATION OF A QUALIFIED DATA CENTER
18 OR QUALIFIED REFURBISHED DATA CENTER, INCLUDING:

19 (I) COMPUTERS AND EQUIPMENT SUPPORTING COMPUTING,
20 NETWORKING, OR DATA STORAGE, INCLUDING SERVERS, SWITCHES,
21 CROSS-CONNECTS, ROUTERS, AND THE APPLICATION SYSTEMS AND
22 OPERATING SYSTEMS THAT ENABLE THE INFORMATION TECHNOLOGY
23 EQUIPMENT;

24 (II) COOLING SYSTEMS, COOLING TOWERS, AND OTHER
25 TEMPERATURE CONTROL INFRASTRUCTURE;

26 (III) POWER INFRASTRUCTURE FOR TRANSFORMATION,
27 DISTRIBUTION, OR MANAGEMENT OF ELECTRICITY USED FOR THE

1 MAINTENANCE AND OPERATION OF A QUALIFIED DATA CENTER OR
2 QUALIFIED REFURBISHED DATA CENTER, INCLUDING BUT NOT LIMITED TO
3 EXTERIOR DEDICATED SUBSTATIONS, ON-SITE POWER GENERATION
4 SYSTEMS, BACKUP POWER GENERATION SYSTEMS, BATTERY SYSTEMS,
5 UNINTERRUPTIBLE POWER SUPPLIES, STRUCTURES ERECTED TO PROTECT
6 ALL INFORMATION TECHNOLOGY EQUIPMENT FROM ANY ENVIRONMENTAL
7 CONDITIONS, AND OTHER RELATED INFRASTRUCTURE; AND

8 (IV) RACKING SYSTEMS, SECURITY CAGES, CABINETS, CABLING,
9 AND TRAYS, WHICH ARE NECESSARY FOR THE MAINTENANCE AND
10 OPERATION OF THE QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
11 DATA CENTER.

12 (b) "INFORMATION TECHNOLOGY EQUIPMENT" INCLUDES ANY
13 EQUIPMENT THAT HAS THE CAPABILITY TO REPLACE THE FUNCTIONALITY
14 OF ANY OF THE EQUIPMENT SPECIFIED IN PARAGRAPH (a) OF THIS
15 SUBSECTION (4).

16 (5) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC
17 DEVELOPMENT CREATED IN SECTION 24-48.5-101, C.R.S.

18 (6) "OPERATOR" MEANS ANY PERSON WHO EXERCISES THE RIGHT
19 TO CONTROL THE CONDUCT OF QUALIFIED DATA CENTER OPERATIONS OR
20 QUALIFIED REFURBISHED DATA CENTER OPERATIONS.

21 (7) "QUALIFIED DATA CENTER" MEANS A FACILITY THAT IS
22 LOCATED IN THE STATE THAT SATISFIES THE FOLLOWING CRITERIA:

23 (a) THE FACILITY IS COMPRISED OF ONE OR MORE BUILDINGS THAT
24 CONSIST IN THE AGGREGATE OF AT LEAST TWENTY-FIVE THOUSAND
25 SQUARE FEET THAT HOUSE INFORMATION TECHNOLOGY EQUIPMENT OR
26 PROVIDE DIRECT SUPPORT FOR THE DATA CENTER OPERATIONS. IN
27 DETERMINING WHETHER THE FACILITY HAS THE REQUIRED SQUARE

1 FOOTAGE, THE SQUARE FOOTAGE OF OFFICE SPACE, MEETING SPACE, AND
2 MECHANICAL AND OTHER SUPPORT FACILITIES IS INCLUDED IF THE SPACES
3 ARE IN DIRECT SUPPORT OF THE OPERATION OF INFORMATION
4 TECHNOLOGY EQUIPMENT LOCATED AT THE FACILITY.

5 (b) THE FACILITY IS LOCATED ON A SINGLE PARCEL OR ON
6 CONTIGUOUS OR ADJACENT PARCELS. SEPARATION OF PARCELS BY A
7 PUBLIC ROAD OR EASEMENT DOES NOT PRECLUDE THE PARCELS FROM
8 BEING CONTIGUOUS OR ADJACENT.

9 (c) (I) THE TOTAL COST OF CONSTRUCTING THE PORTION OF THE
10 FACILITY THAT HOUSES INFORMATION TECHNOLOGY EQUIPMENT OR THAT
11 PROVIDES DIRECT SUPPORT FOR DATA CENTER OPERATIONS AND THE
12 TOTAL COST OF INVESTMENT IN INFORMATION TECHNOLOGY EQUIPMENT
13 FOR THE FACILITY IS AT LEAST FORTY MILLION DOLLARS WITHIN A
14 FIVE-YEAR PERIOD.

15 (II) FOR PURPOSES OF THIS PARAGRAPH (c), IN THE CASE OF A
16 CO-LOCATION FACILITY, THE TOTAL COST OF CONSTRUCTION AND
17 INVESTMENT IN THE FACILITY INCLUDES THE INVESTMENTS BY THE OWNER
18 OR OPERATOR OF THE FACILITY AND ALL TENANTS OF THE FACILITY.

19 (d) INVESTMENT IN THE FACILITY COMMENCED ON OR AFTER
20 JANUARY 1, 2011.

21 (8) "QUALIFIED REFURBISHED DATA CENTER" MEANS A FACILITY
22 THAT IS LOCATED IN THE STATE THAT SATISFIES THE FOLLOWING
23 CRITERIA:

24 (a) THE FACILITY IS COMPRISED OF ONE OR MORE BUILDINGS THAT
25 CONSIST IN THE AGGREGATE OF AT LEAST TWENTY-FIVE THOUSAND
26 SQUARE FEET THAT HOUSE INFORMATION TECHNOLOGY EQUIPMENT OR
27 PROVIDE DIRECT SUPPORT FOR DATA CENTER OPERATIONS. IN

1 DETERMINING WHETHER THE FACILITY HAS THE REQUIRED SQUARE
2 FOOTAGE, THE SQUARE FOOTAGE OF OFFICE SPACE, MEETING SPACE, AND
3 MECHANICAL AND OTHER SUPPORT FACILITIES IS INCLUDED IF THE SPACES
4 ARE IN DIRECT SUPPORT OF THE OPERATION OF INFORMATION
5 TECHNOLOGY EQUIPMENT LOCATED AT THE FACILITY.

6 (b) THE FACILITY IS LOCATED ON A SINGLE PARCEL OR ON
7 CONTIGUOUS OR ADJACENT PARCELS. SEPARATION OF PARCELS BY A
8 PUBLIC ROAD OR EASEMENT DOES NOT PRECLUDE THE PARCELS FROM
9 BEING CONTIGUOUS OR ADJACENT.

10 (c) (I) ALL OR A PORTION OF THE FACILITY IS SUBSTANTIALLY
11 REFURBISHED AND THE TOTAL COST OF REFURBISHMENT OF THE FACILITY
12 AND INVESTMENT IN INFORMATION TECHNOLOGY EQUIPMENT IS AT LEAST
13 TWENTY MILLION DOLLARS WITHIN A TWO-YEAR PERIOD.

14 (II) FOR PURPOSES OF THIS PARAGRAPH (c), A FACILITY IS
15 CONSIDERED SUBSTANTIALLY REFURBISHED IF ALL OR A PORTION OF THE
16 FACILITY HAS BEEN REBUILT OR MODIFIED AND IS USED TO HOUSE
17 INFORMATION TECHNOLOGY EQUIPMENT OR PROVIDE DIRECT SUPPORT FOR
18 DATA CENTER OPERATIONS. THE INSTALLATION OF INFORMATION
19 TECHNOLOGY EQUIPMENT, ENVIRONMENTAL CONTROL, ENERGY
20 EFFICIENCY IMPROVEMENTS, AND OTHER BUILDING IMPROVEMENTS ARE
21 CONSIDERED REFURBISHMENTS AND MAY BE INCLUDED WHEN
22 DETERMINING IF A PORTION OF A FACILITY HAS BEEN REFURBISHED.

23 (III) FOR PURPOSES OF THIS PARAGRAPH (c), IN THE CASE OF A
24 CO-LOCATION FACILITY, THE TOTAL COST OF REFURBISHMENT AND
25 INVESTMENT INCLUDES THE INVESTMENTS BY THE OWNER OR OPERATOR
26 OF THE FACILITY AND ALL DATA CENTER TENANTS OF THE FACILITY.

27 (d) INVESTMENT IN THE REFURBISHMENT OF THE FACILITY

1 COMMENCED ON OR AFTER JANUARY 1, 2014.

2 (9) "QUALIFIED TENANT" MEANS A TENANT THAT LEASES OR
3 RENTS SPACE, EQUIPMENT, OR BANDWIDTH FROM THE OWNER OR
4 OPERATOR OF A CO-LOCATION FACILITY, THAT USES, MAINTAINS, AND PAID
5 SALES AND USE TAX ON INFORMATION TECHNOLOGY EQUIPMENT IN A
6 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER BUT
7 IS NOT THE OWNER OR OPERATOR OF THE FACILITY, AND THAT IS CERTIFIED
8 TO BE A QUALIFIED TENANT OF THE FACILITY BY THE OFFICE PURSUANT TO
9 THIS PART 8.

10 **39-26-803. Refund allowed - criteria.** (1) SUBJECT TO THE
11 LIMITATIONS IN SUBSECTIONS (2), (3), (4), AND (5) OF THIS SECTION, FOR
12 THE CALENDAR YEAR COMMENCING JANUARY 1, 2016, AND FOR EACH
13 CALENDAR YEAR THEREAFTER, THE OWNER OR OPERATOR OF A QUALIFIED
14 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED
15 TENANT MAY CLAIM A REFUND OF STATE SALES AND USE TAX PAID BY THE
16 OWNER, OPERATOR, OR TENANT OF A QUALIFIED DATA CENTER OR
17 QUALIFIED REFURBISHED DATA CENTER TO THE STATE PURSUANT TO PARTS
18 1 AND 2 OF THIS ARTICLE ON THE SALE, STORAGE, USE, OR CONSUMPTION
19 OF INFORMATION TECHNOLOGY EQUIPMENT THAT IS USED AND
20 MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
21 DATA CENTER. THE REFUND ALLOWED ALSO INCLUDES INFORMATION
22 TECHNOLOGY EQUIPMENT THAT IS PURCHASED TO REPLACE OR UPGRADE
23 INFORMATION TECHNOLOGY EQUIPMENT IN A QUALIFIED DATA CENTER OR
24 QUALIFIED REFURBISHED DATA CENTER AND INFORMATION TECHNOLOGY
25 EQUIPMENT THAT IS RELOCATED TO A QUALIFIED DATA CENTER OR
26 QUALIFIED REFURBISHED DATA CENTER FROM OUTSIDE THE STATE.

27 (2) THE REFUND ALLOWED IN SUBSECTION (1) OF THIS SECTION

1 APPLIES TO THE STATE SALES OR USE TAX PAID ON OR AFTER JANUARY 1,
2 2016, FOR ANY INFORMATION TECHNOLOGY EQUIPMENT THAT IS USED AND
3 MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
4 DATA CENTER WITHIN TWENTY YEARS AFTER THE DATE OF THE FIRST
5 INVESTMENT IN THE FACILITY FOR THE PURPOSE OF BECOMING A
6 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER.

7 (3) INFORMATION TECHNOLOGY EQUIPMENT MUST BE USED AND
8 MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
9 DATA CENTER FOR AT LEAST ONE YEAR, WHETHER EXPENSED OR
10 CAPITALIZED FOR ACCOUNTING PURPOSES, DURING THE PERIOD THAT THE
11 FACILITY IS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA
12 CENTER; EXCEPT THAT THE REQUIREMENT THAT THE EQUIPMENT BE USED
13 AND MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED
14 REFURBISHED DATA CENTER FOR AT LEAST ONE YEAR DOES NOT APPLY TO
15 INFORMATION TECHNOLOGY EQUIPMENT THAT FAILS OR IS DESTROYED.

16 (4) THE TOTAL AMOUNT OF TAX REFUNDS ALLOWED PURSUANT TO
17 THIS PART 8 TO THE OWNER OR OPERATOR OF A QUALIFIED DATA CENTER
18 OR QUALIFIED REFURBISHED DATA CENTER OR TO A QUALIFIED TENANT
19 SHALL NOT EXCEED THREE MILLION DOLLARS IN A CALENDAR YEAR.

20 (5) FOR THE PURPOSE OF THE REFUNDS ALLOWED PURSUANT TO
21 THIS PART 8, THE SALE, STORAGE, USE, OR CONSUMPTION OF INFORMATION
22 TECHNOLOGY EQUIPMENT THAT IS USED AND MAINTAINED IN A QUALIFIED
23 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER:

24 (a) DOES NOT INCLUDE BASIC CONSTRUCTION AND BUILDING
25 MATERIALS USED IN STRUCTURES THAT WERE ERECTED TO PROTECT
26 INFORMATION TECHNOLOGY EQUIPMENT FROM ENVIRONMENTAL
27 CONDITIONS; AND

1 (b) DOES INCLUDE ELECTRONIC EQUIPMENT PERMANENTLY
2 INSTALLED WITHIN THE FACILITY FOR PURPOSES OF OPERATING THE
3 FACILITY OR THE EQUIPMENT WITHIN THE FACILITY EITHER DIRECTLY OR
4 INDIRECTLY.

5 **39-26-804. Affidavit - supporting documentation to Colorado**
6 **office of economic development - certification.** (1) THE OWNER OR
7 OPERATOR OF A FACILITY OR A DATA CENTER TENANT IN A FACILITY THAT
8 WISHES TO CLAIM THE REFUND ALLOWED PURSUANT TO THIS PART 8 SHALL
9 SUBMIT AN AFFIDAVIT TO THE OFFICE, ALONG WITH SUPPORTING
10 DOCUMENTATION, STATING THAT THE FACILITY SATISFIES THE CRITERIA
11 TO BE A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA
12 CENTER OR THAT THE DATA CENTER TENANT IS A QUALIFIED TENANT. THE
13 OFFICE SHALL DETERMINE THE TIME AND MANNER IN WHICH THE
14 AFFIDAVITS ARE SUBMITTED. THE OFFICE SHALL BEGIN ACCEPTING
15 AFFIDAVITS ON JULY 1, 2016, AND SHALL PROVIDE AN OPPORTUNITY AT
16 LEAST ONCE EVERY THREE MONTHS FOR OWNERS, OPERATORS, AND DATA
17 CENTER TENANTS OF FACILITIES TO SUBMIT AFFIDAVITS AND SUPPORTING
18 DOCUMENTATION PURSUANT TO THIS SECTION.

19 (2) (a) THE OFFICE SHALL DETERMINE WHAT SUPPORTING
20 DOCUMENTATION THE OWNER OR OPERATOR OF A FACILITY IS REQUIRED
21 TO SUBMIT ALONG WITH THE AFFIDAVIT PURSUANT TO SUBSECTION (1) OF
22 THIS SECTION. AT A MINIMUM, THE OFFICE SHALL REQUIRE THAT THE
23 OWNER OR OPERATOR OF A FACILITY PROVIDE THE FOLLOWING TO THE
24 OFFICE:

25 (I) THE COST TO CONSTRUCT OR REFURBISH THE FACILITY OR THE
26 COST TO RELOCATE A FACILITY FROM OUTSIDE THE STATE, AS APPLICABLE,
27 AND THE AMOUNT OF THE INVESTMENT IN INFORMATION TECHNOLOGY

1 EQUIPMENT; AND

2 (II) WHEN THE COSTS TO CONSTRUCT OR REFURBISH THE FACILITY
3 OR THE COSTS TO RELOCATE A FACILITY FROM OUTSIDE THE STATE WERE
4 INCURRED AND WHEN THE INVESTMENT COSTS IN INFORMATION
5 TECHNOLOGY EQUIPMENT WERE INCURRED.

6 (b) THE OFFICE SHALL DETERMINE WHAT SUPPORTING
7 DOCUMENTATION A TENANT NEEDS TO SUBMIT TO THE OFFICE TO
8 ESTABLISH THAT THE TENANT IS A QUALIFIED TENANT OF A QUALIFIED
9 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER. A TENANT IS
10 REQUIRED TO SUBMIT SUCH DOCUMENTATION TO THE OFFICE IN A FORM
11 AND MANNER TO BE DETERMINED BY THE OFFICE.

12 (3) IN SUBMITTING THE INFORMATION REQUIRED BY SUBSECTION
13 (2) OF THIS SECTION, IF THE OWNER OR OPERATOR OF A CO-LOCATION
14 FACILITY IS NOT ABLE TO OBTAIN ORIGINAL PURCHASE DOCUMENTATION
15 FROM DATA CENTER TENANTS OF THE CO-LOCATION FACILITY THAT USE
16 AND MAINTAIN INFORMATION TECHNOLOGY EQUIPMENT WITHIN THE
17 FACILITY, THE OWNER OR OPERATOR MAY USE REASONABLE ESTIMATION
18 METHODS AS DETERMINED BY THE OFFICE TO PROJECT THE INVESTMENT
19 COSTS.

20 (4) IN ADDITION TO THE SUPPORTING DOCUMENTATION TO BE
21 SUBMITTED WITH THE AFFIDAVIT PURSUANT TO SUBSECTION (1) OF THIS
22 SECTION, THE OFFICE MAY REQUIRE THE OWNER OR OPERATOR OF A
23 FACILITY OR THE DATA CENTER TENANT OF A CO-LOCATION FACILITY TO
24 SUBMIT INFORMATION TO THE OFFICE REGARDING THE IMPACT THAT THE
25 REFUND ALLOWED IN THIS PART 8 HAD ON THE OWNER, OPERATOR, OR
26 DATA CENTER TENANT'S DECISION TO LOCATE OR EXPAND A BUSINESS,
27 MAKE INVESTMENTS, AND HIRE EMPLOYEES IN THE STATE. IF THE OWNER,

1 OPERATOR, OR DATA CENTER TENANT OF A CO-LOCATION FACILITY FAILS
2 TO PROVIDE THE INFORMATION REQUESTED BY THE OFFICE, THE OFFICE
3 MAY DENY STATUS AS A QUALIFIED DATA CENTER, QUALIFIED
4 REFURBISHED DATA CENTER, OR QUALIFIED TENANT, AS APPLICABLE.

5 (5) PRIOR TO MAKING A FINAL DETERMINATION OF WHETHER A
6 FACILITY IS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA
7 CENTER, OR WHETHER A DATA CENTER TENANT OF A CO-LOCATION
8 FACILITY IS A QUALIFIED TENANT, THE OFFICE SHALL CONSULT WITH THE
9 COLORADO ECONOMIC DEVELOPMENT COMMISSION CREATED IN SECTION
10 24-46-102, C.R.S., REGARDING WHETHER THE FACILITY OR THE DATA
11 CENTER TENANT SATISFIES THE CRITERIA TO BE A QUALIFIED DATA
12 CENTER, QUALIFIED REFURBISHED DATA CENTER, OR QUALIFIED TENANT,
13 AS APPLICABLE.

14 (6) IF, BASED ON THE INFORMATION PROVIDED TO THE OFFICE
15 PURSUANT TO THIS SECTION, THE OFFICE DETERMINES THAT A FACILITY
16 SATISFIES THE CRITERIA TO BE A QUALIFIED DATA CENTER OR QUALIFIED
17 REFURBISHED DATA CENTER OR DETERMINES THAT A DATA CENTER
18 TENANT SATISFIES THE CRITERIA TO BE A QUALIFIED TENANT, THE OFFICE
19 SHALL NOTIFY THE DEPARTMENT AND ISSUE A CERTIFICATION TO THE
20 OWNER OR OPERATOR OF THE FACILITY OR THE DATA CENTER TENANT OF
21 A FACILITY STATING THAT THE OWNER OR OPERATOR OR THE DATA
22 CENTER TENANT, AS APPLICABLE, MAY CLAIM A REFUND PURSUANT TO
23 THIS SECTION FOR THE STATE SALES AND USE TAX PAID ON INFORMATION
24 TECHNOLOGY EQUIPMENT THAT IS USED AND MAINTAINED IN THE
25 FACILITY.

26 (7) (a) IF THE OFFICE DETERMINES THAT A FACILITY IS A QUALIFIED
27 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER, THE FACILITY

1 RETAINS ITS QUALIFIED STATUS FOR TWENTY YEARS FROM THE DATE OF
2 THE FIRST INVESTMENT IN THE FACILITY FOR THE PURPOSE OF BECOMING
3 A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER
4 SUBJECT TO COMPLIANCE BY THE DATA CENTER OWNER OR OPERATOR
5 WITH THE ONGOING REPORTING REQUIREMENTS SPECIFIED IN SECTION
6 39-26-808 (2).

7 (b) IF, AFTER BECOMING A QUALIFIED DATA CENTER OR QUALIFIED
8 REFURBISHED DATA CENTER, BUT PRIOR TO THE EXPIRATION OF THE
9 TWENTY YEAR CERTIFICATION PERIOD SPECIFIED IN PARAGRAPH (a) OF
10 THIS SUBSECTION (7), A FACILITY MAKES AN ADDITIONAL INVESTMENT TO
11 SUBSTANTIALLY REFURBISH THE FACILITY AND THE NEW INVESTMENT
12 SATISFIES THE CRITERIA SPECIFIED IN SECTION 39-26-802 (8), THE
13 QUALIFIED DATA CENTER OR THE QUALIFIED REFURBISHED DATA CENTER
14 MAY FOLLOW THE PROCEDURES SPECIFIED IN THIS SECTION TO BE
15 CERTIFIED AS A QUALIFIED REFURBISHED DATA CENTER BY THE OFFICE. IF
16 THE OFFICE DETERMINES THAT THE FACILITY HAS SATISFIED THE CRITERIA
17 TO BE A QUALIFIED REFURBISHED DATA CENTER, THE FACILITY'S TWENTY
18 YEAR PERIOD TO RETAIN ITS QUALIFIED STATUS RESTARTS AND WILL LAST
19 FOR TWENTY YEARS FROM THE DATE OF THE FIRST INVESTMENT IN THE
20 FACILITY FOR THE PURPOSE OF BECOMING A QUALIFIED REFURBISHED
21 DATA CENTER PURSUANT TO THIS PARAGRAPH (b).

22 (8) A FACILITY THAT IS CERTIFIED AS A QUALIFIED DATA CENTER
23 OR QUALIFIED REFURBISHED DATA CENTER PURSUANT TO THIS SECTION
24 RETAINS ITS QUALIFIED STATUS REGARDLESS OF ANY DIRECT OR INDIRECT
25 FUTURE TRANSFER, SALE, OR DISPOSITION OF THE FACILITY.

26 **39-26-805. Refund application.** (1) TO CLAIM THE REFUND
27 ALLOWED BY THIS PART 8, THE OWNER OR OPERATOR OF A QUALIFIED

1 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED
2 TENANT MUST SUBMIT A REFUND APPLICATION AND A COPY OF ITS
3 CERTIFICATION FROM THE OFFICE TO THE DEPARTMENT IN A FORM AND
4 MANNER DETERMINED BY THE DEPARTMENT. SUCH APPLICATION MUST BE
5 SUBMITTED NO EARLIER THAN JANUARY 1 AND NO LATER THAN APRIL 1
6 OF THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR FOR WHICH THE
7 REFUND IS CLAIMED; EXCEPT THAT, FOR REFUNDS CLAIMED FOR CALENDAR
8 YEARS PRIOR TO THE FIRST CALENDAR YEAR IN WHICH A FACILITY IS
9 CERTIFIED AS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
10 DATA CENTER, THE APPLICATION FOR ALL SUCH YEARS MUST BE
11 SUBMITTED NO EARLIER THAN JANUARY 1 AND NO LATER THAN APRIL 1
12 OF THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE
13 FACILITY WAS CERTIFIED AS A QUALIFIED DATA CENTER OR QUALIFIED
14 REFURBISHED DATA CENTER. THIS SUBSECTION (1) SHALL NOT BE
15 CONSTRUED TO REQUIRE THE OWNER OF A CO-LOCATION FACILITY TO BE
16 RESPONSIBLE FOR SUBMITTING A REFUND APPLICATION ON BEHALF OF ANY
17 TENANT OF THE CO-LOCATION FACILITY.

18 (2) THE APPLICATION REQUIRED BY SUBSECTION (1) OF THIS
19 SECTION SHALL BE ACCOMPANIED BY PROOF OF PAYMENT OF STATE SALES
20 AND USE TAXES PAID BY THE OWNER OR OPERATOR OF A QUALIFIED DATA
21 CENTER OR QUALIFIED REFURBISHED DATA CENTER OR PAID BY A
22 QUALIFIED TENANT IN THE IMMEDIATELY PRECEDING CALENDAR YEAR;
23 EXCEPT THAT, IN THE FIRST YEAR IN WHICH A FACILITY IS CERTIFIED AS A
24 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER, THE
25 APPLICATION FOR REFUND SHALL INCLUDE ALL PURCHASES MADE AND ALL
26 INFORMATION TECHNOLOGY EQUIPMENT RELOCATED TO THE STATE
27 DURING THE QUALIFICATION PERIOD SPECIFIED IN SECTION 39-26-802 (7)

1 AND (8) AND FOR WHICH THE REFUND IS CLAIMED.

2 (3) THE APPLICATION REQUIRED BY SUBSECTION (1) OF THIS
3 SECTION MUST ALSO INCLUDE ANY ADDITIONAL INFORMATION THAT THE
4 DEPARTMENT MAY REQUIRE BY RULE, WHICH MAY INCLUDE, WITHOUT
5 LIMITATION, A DETAILED LIST OF ALL EXPENDITURES THAT SUPPORT A
6 CLAIM FOR A REFUND, THE NAME AND ADDRESS OF AN INDIVIDUAL WHO
7 MAINTAINS RECORDS OF SUCH EXPENDITURES, AND A STATEMENT THAT
8 THE QUALIFIED DATA CENTER, QUALIFIED REFURBISHED DATA CENTER, OR
9 QUALIFIED TENANT AGREES TO FURNISH RECORDS OF ALL SUCH
10 EXPENDITURES TO THE DEPARTMENT UPON REQUEST. A REFUND IS NOT
11 ALLOWED IF THE QUALIFIED DATA CENTER, QUALIFIED REFURBISHED DATA
12 CENTER, OR QUALIFIED TENANT HAS NOT COMPLIED WITH THE
13 REQUIREMENTS OF THIS SECTION.

14 **39-26-806. Limitations - refund not allowed.**
15 NOTWITHSTANDING THE PROVISIONS OF SECTION 39-26-703 (2) (d), ALL
16 SALES, STORAGE, AND USE OF INFORMATION TECHNOLOGY EQUIPMENT
17 THAT IS USED AND MAINTAINED IN A QUALIFIED DATA CENTER OR
18 QUALIFIED REFURBISHED DATA CENTER IS ELIGIBLE FOR THE REFUND
19 ALLOWED PURSUANT TO THIS PART 8 FOR FIVE YEARS AFTER THE DATE OF
20 THE SALE, STORAGE, OR USE OF SUCH INFORMATION TECHNOLOGY
21 EQUIPMENT; EXCEPT THAT NO REFUND IS ALLOWED FOR ANY STATE SALES
22 OR USE TAX PAID ON INFORMATION TECHNOLOGY EQUIPMENT PRIOR TO
23 JANUARY 1, 2016.

24 **39-26-807. Confidentiality.** PROPRIETARY BUSINESS
25 INFORMATION THAT A QUALIFIED DATA CENTER, QUALIFIED REFURBISHED
26 DATA CENTER, OR QUALIFIED TENANT SUBMITS TO THE OFFICE OR TO THE
27 DEPARTMENT PURSUANT TO THIS PART 8, EITHER BEFORE OR AFTER

1 OBTAINING CERTIFICATION, IS CONFIDENTIAL AND THE OFFICE AND THE
2 DEPARTMENT SHALL NOT DISCLOSE SUCH INFORMATION TO THE PUBLIC;
3 EXCEPT THAT THE OFFICE MAY TRANSMIT INFORMATION TO THE
4 DEPARTMENT AS NECESSARY AND THE OFFICE AND THE DEPARTMENT MAY
5 DISCLOSE TO THE PUBLIC THE NAME OF A FACILITY THAT HAS BEEN
6 CERTIFIED AS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED
7 DATA CENTER PURSUANT TO THIS PART 8.

8 **39-26-808. Report.** (1) NOTWITHSTANDING THE PROVISIONS OF
9 SECTION 24-1-136 (11) (a) (I), C.R.S., ON OR BEFORE NOVEMBER 1, 2017,
10 AND ON OR BEFORE NOVEMBER 1 EVERY YEAR THEREAFTER, THE OFFICE
11 SHALL SUBMIT A REPORT TO THE MEMBERS OF THE GENERAL ASSEMBLY
12 THAT ANALYZES AND ESTIMATES THE ECONOMIC BENEFITS OF THE REFUND
13 ALLOWED IN THIS PART 8.

14 (2) (a) TO ASSIST THE OFFICE IN PREPARING THE REPORT REQUIRED
15 BY SUBSECTION (1) OF THIS SECTION, ON AN ANNUAL BASIS OR AS
16 OTHERWISE REQUIRED BY THE OFFICE, THE OWNER OR OPERATOR OF A
17 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER OR
18 A QUALIFIED TENANT OF A FACILITY IS REQUIRED TO SUBMIT A REPORT TO
19 THE OFFICE THAT CONTAINS INFORMATION REQUESTED BY THE OFFICE FOR
20 THE PURPOSE OF TRACKING AND MONITORING QUALIFIED DATA CENTERS,
21 QUALIFIED REFURBISHED DATA CENTERS, AND QUALIFIED TENANTS OF
22 FACILITIES.

23 (b) THE INFORMATION REQUESTED BY THE OFFICE PURSUANT TO
24 PARAGRAPH (a) OF THIS SUBSECTION (2) MAY INCLUDE, IF AVAILABLE,
25 REPORTS ON THE NUMBER OF EMPLOYEES OR CONTRACTORS AT THE
26 FACILITY, THE AVERAGE SALARY OF THE EMPLOYEES OR CONTRACTORS AT
27 THE FACILITY, FACILITY OPERATING EXPENSES, CAPITAL INVESTMENTS,

1 INFORMATION REGARDING TRAVEL TO COLORADO BY OUT-OF-STATE
2 EMPLOYEES OR CONTRACTORS TO VISIT THE FACILITY, AND OTHER
3 ECONOMIC BENEFITS THAT THE FACILITY PROVIDES. THE REPORTS MUST
4 BE CONSISTENT, WHEN POSSIBLE, WITH THE INFORMATION SUBMITTED TO
5 THE DEPARTMENT TO CLAIM THE SALES AND USE TAX REFUND PURSUANT
6 TO SECTION 39-26-805. THE OWNER OR OPERATOR OF A QUALIFIED DATA
7 CENTER OR QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED
8 TENANT SHALL USE REASONABLE EFFORTS TO OBTAIN OR ESTIMATE THE
9 INFORMATION FOR ITS REPORT TO THE OFFICE.

10 (c) IF THE OWNER OR OPERATOR OF A QUALIFIED DATA CENTER OR
11 QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED TENANT FAILS TO
12 SUBMIT A REPORT TO THE OFFICE PURSUANT TO THIS SUBSECTION (2), THE
13 OFFICE MAY REVOKE CERTIFICATION AS A QUALIFIED DATA CENTER,
14 QUALIFIED REFURBISHED DATA CENTER, OR QUALIFIED TENANT.

15 **39-26-809. Rules.** THE DEPARTMENT SHALL PROMULGATE RULES
16 FOR THE IMPLEMENTATION OF THIS PART 8 IN ACCORDANCE WITH THE
17 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,
18 C.R.S.

19 **SECTION 2. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly
22 (August 5, 2015, if adjournment sine die is on May 6, 2015); except that,
23 if a referendum petition is filed pursuant to section 1 (3) of article V of
24 the state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part will not take effect
26 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.