

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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

Finance
Appropriations

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/billsummaries>.)

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.

SENATE
2nd Reading Unamended
May 5, 2015

HOUSE
3rd Reading Unamended
April 27, 2015

HOUSE
Amended 2nd Reading
April 23, 2015

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** 2-3-1704.5 as
3 follows:

4 **2-3-1704.5. Interim study - data centers - recommendations to**
5 **general assembly - repeal.** (1) (a) DURING THE INTERIM FOLLOWING THE
6 FIRST REGULAR SESSION OF THE SEVENTIETH GENERAL ASSEMBLY, THE
7 COMMITTEE SHALL STUDY THE POTENTIAL BENEFITS OF DATA CENTERS AS
8 A COMPONENT OF THE STATE'S ADVANCED TECHNOLOGY INDUSTRY. AS
9 PART OF THE STUDY, THE COMMITTEE SHALL REVIEW LEGISLATION
10 ENACTED BY OTHER STATES THAT PROVIDE INCENTIVES FOR DATA
11 CENTERS TO LOCATE OR EXPAND IN THOSE STATES.

12 (b) IN FURTHERANCE OF THE STUDY REQUIRED BY THIS

1 SUBSECTION (1), THE COMMITTEE MAY INVITE EXPERTS IN THE DATA
2 CENTER INDUSTRY, REPRESENTATIVES FROM STATE AND LOCAL
3 GOVERNMENTAL ENTITIES, AND REPRESENTATIVES FROM RELEVANT
4 PUBLIC OR PRIVATE ORGANIZATIONS TO PARTICIPATE AND ASSIST THE
5 COMMITTEE IN ITS WORK AS DEEMED NECESSARY AND APPROPRIATE BY
6 THE COMMITTEE. THE COMMITTEE MAY ALSO SOLICIT AND ACCEPT
7 REPORTS, WRITTEN COMMENTS, PUBLIC TESTIMONY, AND OTHER
8 INFORMATION, ADVICE, OR DATA AS THE MEMBERS OF THE COMMITTEE
9 DEEM RELEVANT AND NECESSARY TO PERFORM THE REQUIREMENTS OF
10 THIS SECTION.

11 (2) THROUGH ITS STUDY OF DATA CENTERS, THE COMMITTEE
12 SHALL DETERMINE THE FOLLOWING:

13 (a) WHETHER DATA CENTERS, AS A COMPONENT OF THE ADVANCED
14 TECHNOLOGY INDUSTRY, ARE AN IMPORTANT ASSET AND CONTRIBUTE A
15 SIGNIFICANT ECONOMIC BENEFIT TO THE STATE, INCLUDING HIGH-END
16 INFORMATION TECHNOLOGY, CONSULTING, AND CONSTRUCTION
17 EMPLOYMENT;

18 (b) IF DATA CENTERS, ONCE BUILT, CAN CREATE A LONG-TERM
19 INVESTMENT IN A COMMUNITY;

20 (c) WHETHER DATA CENTERS CAN BE A SIGNIFICANT SOURCE OF
21 NEW REVENUE ALONG WITH TYPICAL ECONOMIC GROWTH DRIVERS SUCH
22 AS MANUFACTURING, HEADQUARTERS, AND DISTRIBUTION CENTERS;

23 (d) WHETHER THE STATE WOULD BENEFIT SIGNIFICANTLY FROM
24 STATE-IMPLEMENTED TAX INCENTIVES DESIGNED TO STIMULATE PRIVATE
25 SECTOR INDUSTRY GROWTH;

26 (e) WHETHER BY NOT OFFERING A TAX INCENTIVE TO STIMULATE
27 GROWTH IN THE DATA CENTER INDUSTRY, THE STATE HAS LOST

1 OPPORTUNITIES TO HAVE DATA CENTER BUSINESSES LOCATE OR EXPAND
2 IN THE STATE DUE TO DATA CENTER BUSINESSES TAKING ADVANTAGE OF
3 SUCH TAX INCENTIVES OFFERED BY OTHER STATES; AND

4 (f) WHETHER PROVIDING STATE TAX INCENTIVES TO ENCOURAGE
5 THE EXPANSION OF CURRENT DATA CENTER BUSINESSES AND TO
6 ENCOURAGE NEW DATA CENTER BUSINESSES TO LOCATE TO THE STATE
7 WOULD PROVIDE AN ECONOMIC BENEFIT TO THE STATE AND TO LOCAL
8 GOVERNMENTS IN THE STATE.

9 (3) ON OR BEFORE JANUARY 31, 2016, THE COMMITTEE SHALL
10 MAKE RECOMMENDATIONS TO THE BUSINESS AFFAIRS AND LABOR
11 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE BUSINESS
12 LABOR AND TECHNOLOGY COMMITTEE OF THE SENATE REGARDING
13 WHETHER IT WOULD BE IN THE ECONOMIC INTEREST OF THE STATE AND OF
14 LOCAL GOVERNMENTS IN THE STATE TO PROVIDE STATE-IMPLEMENTED
15 TAX INCENTIVES TO ENCOURAGE DATA CENTER BUSINESS TO LOCATE AND
16 EXPAND IN THE STATE.

17 (4) THIS SECTION IS REPEALED EFFECTIVE JULY 1, 2016.

18 **SECTION 2. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.