

1 AN ACT relating to the taxation of data centers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 139 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) On and after July 1, 2021, and on and before June 30, 2051, the taxes imposed by*
6 *this chapter do not apply to:*

7 *(a) Tangible personal property used to construct, retrofit, or upgrade a data*
8 *center; and*

9 *(b) Data center equipment for use in that data center;*
10 *purchased by a person engaged primarily in a commercial activity or*
11 *separately operated segment of business that exists for the purposes of*
12 *engaging solely in the operation of a data center or operating by collocating*
13 *with a person that operates a data center.*

14 *(2) The exemption provided in subsection (1) of this section shall apply whether or*
15 *not the seller is under contract to deliver, assemble, and incorporate into real*
16 *estate the equipment, machinery, attachments, and any materials incorporated*
17 *into the construction, retrofit, or upgrade of the data center.*

18 *(3) To qualify for the exemption provided in subsection (1) of this section, the data*
19 *center shall certify to the department that it shall:*

20 *(a) Make capital investments in one (1) or more data centers after July 1, 2021,*
21 *in amounts of at least one hundred fifty million dollars (\$150,000,000) in*
22 *the aggregate within the first five (5) years after commencement of*
23 *construction; and*

24 *(b) Create and maintain at least twenty (20) new jobs at the data center within*
25 *two (2) calendar years after the commencement of operations.*

26 *(4) (a) Data centers shall report to the department annually, on or before October 1*
27 *of each year:*

- 1 1. The progress made toward achieving performance targets, which shall
2 include:
3 a. A listing of the new jobs, each with an associated average annual
4 wage; and
5 b. The amount of capital investment in data center facilities and
6 equipment;
7 2. The address of the location of the data center;
8 3. The county in which the data center is located;
9 4. Based on the most recent U.S. federal census data, a statement as to
10 whether the county where the data center is located has a population
11 of;
12 a. Less than thirty thousand (30,000) people;
13 b. At least thirty thousand (30,000) but no more than sixty
14 thousand (60,000) people; or
15 c. More than sixty thousand (60,000) people;
16 5. A statement as to whether the data center is located in a federal
17 opportunity zone as designated in 26 U.S.C. sec. 1400Z-1 and 1400Z-2
18 (2017);
19 6. The total amount of the sales and use tax exemption claimed for the
20 immediately preceding fiscal year, with a breakdown of the exemption
21 claimed by month; and
22 7. The cumulative total for all years of the amount of the sales and use
23 tax exemption claimed.
24 (b) If a data center fails to meet the reporting, investment, and job creation
25 requirements provided within the time periods required in this section, it
26 shall repay the sales or use taxes that were exempted, plus accrued interest
27 from the dates on which purchases were made, to the department within

1 sixty (60) days of the noncompliance.

2 (5) On or before December 1, 2021, and on or before each December 1 thereafter as
3 long as the exemption applies, the department shall report to the Interim Joint
4 Committee on Appropriations and Revenue:

5 (a) The aggregate amount of capital investment and new jobs from all
6 qualifying data centers reported for the immediately preceding fiscal year by
7 month and in total for the year;

8 (b) The aggregate amount of the exemption claimed from all qualifying data
9 centers and the number of qualifying data centers benefitting from the
10 exemption;

11 (c) Based upon the most recent census data, the number of qualifying data
12 centers located in counties with a population of:

13 1. Less than thirty thousand (30,000) people;

14 2. At least thirty thousand (30,000) but no more than sixty thousand
15 (60,000) people; or

16 3. More than sixty thousand (60,000) people; and

17 (d) The number of qualifying data centers located in a federal opportunity zone
18 as designated in 26 U.S.C. sec. 1400Z-1 and 1400Z-2 (2017).

19 (6) Notwithstanding KRS 139.720, every qualifying data center using this exemption
20 shall keep the records, receipts, invoices, and other pertinent papers in such form
21 and timeframe as the department may require.

22 (7) As used in this section:

23 (a) "Capital investment" means:

24 1. Obligations incurred for labor and to contractors, subcontractors,
25 builders, and materialmen in connection with the acquisition,
26 construction, installation, equipping, and rehabilitation of a project;

27 2. The cost of acquiring land or rights in land within the development

- 1 area on the footprint of the project, and any cost incident thereto,
2 including recording fees;
- 3 3. The cost of contract bonds and of insurance of all kinds that may be
4 required or necessary during the course of acquisition, construction,
5 installation, equipping, and rehabilitation of a project which is not
6 paid by the contractor or contractors or otherwise provided;
- 7 4. All costs of architectural and engineering services, including test
8 borings, surveys, estimates, plans, specifications, preliminary
9 investigations, supervision of construction, and the performance of all
10 the duties required by or consequent upon the acquisition,
11 construction, installation, equipping, and rehabilitation of a project;
- 12 5. All costs that are required to be paid under the terms of any contract
13 for the acquisition, construction, installation, equipping, and
14 rehabilitation of a project; and
- 15 6. All other costs of a nature comparable to those described in this
16 subsection that occur after preliminary approval;
- 17 (b) "Commencement of construction" means the first date on which a capital
18 investment has been made for a data center;
- 19 (c) "Commencement of operations" means the date on which a certificate of
20 occupancy is issued for a data center;
- 21 (d) "Data center" means a person that has a facility comprised of one (1) or
22 more buildings in Kentucky that is used to house and continuously operate
23 computer servers and associated data center equipment for the transmission
24 and storage of data where the facility has the following characteristics:
- 25 1. Uninterruptible power supplies, generator power, or both;
26 2. Sophisticated fire suppression and prevention systems;
27 3. Enhanced physical security; and

- 1 4. Restricted access;
- 2 (e) 1. "Data center equipment" means:
- 3 a. Equipment that is used to outfit, operate, or benefit a data
- 4 center; and
- 5 b. Component parts, installations, refreshments, replacements, and
- 6 upgrades to the equipment, regardless of whether any of the
- 7 equipment is affixed to or incorporated into real property.
- 8 2. Eligible "data center equipment" includes:
- 9 a. Equipment necessary for the transformation, generation,
- 10 distribution, or management of electricity that is required to
- 11 operate computer servers or similar data storage equipment,
- 12 including:
- 13 i. Uninterruptible energy supplies;
- 14 ii. Generators;
- 15 iii. Conduit;
- 16 iv. Gaseous fuel piping;
- 17 v. Cabling;
- 18 vi. Duct banks;
- 19 vii. Switches;
- 20 viii. Switchboards;
- 21 ix. Batteries; and
- 22 x. Testing equipment;
- 23 b. Equipment necessary to cool and maintain a controlled
- 24 environment for the operation of computer servers or data
- 25 storage systems and other components of a computer data center,
- 26 including:
- 27 i. Mechanical equipment;

- 1 ii. Refrigerant piping;
- 2 iii. Gaseous fuel piping;
- 3 iv. Adiabatic and free cooling systems;
- 4 v. Cooling towers;
- 5 vi. Water softeners;
- 6 vii. Air handling units;
- 7 viii. Indoor direct exchange units;
- 8 ix. Fans;
- 9 x. Ducting; and
- 10 xi. Filters;
- 11 c. Water conservation systems, including facilities or mechanisms
- 12 that are designed to collect, conserve, and reuse water;
- 13 d. Software, including but not limited to:
- 14 i. Enabling software and licensing agreements;
- 15 ii. Computer servers or similar data storage equipment;
- 16 iii. Chassis;
- 17 iv. Networking equipment;
- 18 v. Switches;
- 19 vi. Racks;
- 20 vii. Cabling;
- 21 viii. Trays; and
- 22 ix. Conduits;
- 23 e. Monitoring equipment;
- 24 f. Security systems;
- 25 g. i. Modular data centers; and
- 26 ii. Preassembled components of any item, including
- 27 components used in the manufacturing of modular data

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centers; and

h. Other tangible personal property that is essential to the operations of a computer data center;

(f) "Full-time employee" means a person employed for a minimum of thirty-five (35) hours per week and subject to the tax imposed by KRS 141.020; and

(g) 1. "New jobs" means new jobs that:

a. Are created and located in the state;

b. Are nonseasonal;

c. Are full-time, meaning a minimum of thirty-five (35) hours a week and subject to the state income tax imposed by KRS 141.020;

d. i. Collectively pay an average weekly wage that equals or exceeds one hundred twenty-five percent (125%) of the average weekly wage for the county where the data center is located, as determined by the most recent report of the United States Bureau of Labor Statistics; and

ii. If the average weekly wage calculated in subpart i. of this subdivision is less than one hundred fifty percent (150%) of the federal minimum wage, then the base hourly wage shall be one hundred fifty percent (150%) of the federal minimum wage.

2. "New jobs" do not include jobs that merely change locations within the state.

➔Section 2. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the department, present or former member of a county board of assessment appeals, present or former property

1 valuation administrator or employee, present or former secretary or employee of the
2 Finance and Administration Cabinet, former secretary or employee of the Revenue
3 Cabinet, or any other person, shall intentionally and without authorization inspect or
4 divulge any information acquired by him of the affairs of any person, or information
5 regarding the tax schedules, returns, or reports required to be filed with the
6 department or other proper officer, or any information produced by a hearing or
7 investigation, insofar as the information may have to do with the affairs of the
8 person's business.

9 (2) The prohibition established by subsection (1) of this section shall not extend to:

- 10 (a) Information required in prosecutions for making false reports or returns of
11 property for taxation, or any other infraction of the tax laws;
- 12 (b) Any matter properly entered upon any assessment record, or in any way made
13 a matter of public record;
- 14 (c) Furnishing any taxpayer or his properly authorized agent with information
15 respecting his own return;
- 16 (d) Testimony provided by the commissioner or any employee of the department
17 in any court, or the introduction as evidence of returns or reports filed with the
18 department, in an action for violation of state or federal tax laws or in any
19 action challenging state or federal tax laws;
- 20 (e) Providing an owner of unmined coal, oil or gas reserves, and other mineral or
21 energy resources assessed under KRS 132.820, or owners of surface land
22 under which the unmined minerals lie, factual information about the owner's
23 property derived from third-party returns filed for that owner's property, under
24 the provisions of KRS 132.820, that is used to determine the owner's
25 assessment. This information shall be provided to the owner on a confidential
26 basis, and the owner shall be subject to the penalties provided in KRS
27 131.990(2). The third-party filer shall be given prior notice of any disclosure

- 1 of information to the owner that was provided by the third-party filer;
- 2 (f) Providing to a third-party purchaser pursuant to an order entered in a
3 foreclosure action filed in a court of competent jurisdiction, factual
4 information related to the owner or lessee of coal, oil, gas reserves, or any
5 other mineral resources assessed under KRS 132.820. The department may
6 promulgate an administrative regulation establishing a fee schedule for the
7 provision of the information described in this paragraph. Any fee imposed
8 shall not exceed the greater of the actual cost of providing the information or
9 ten dollars (\$10);
- 10 (g) Providing information to a licensing agency, the Transportation Cabinet, or
11 the Kentucky Supreme Court under KRS 131.1817;
- 12 (h) Statistics of gasoline and special fuels gallonage reported to the department
13 under KRS 138.210 to 138.448;
- 14 (i) Providing any utility gross receipts license tax return information that is
15 necessary to administer the provisions of KRS 160.613 to 160.617 to
16 applicable school districts on a confidential basis;
- 17 (j) Providing documents, data, or other information to a third party pursuant to an
18 order issued by a court of competent jurisdiction; or
- 19 (k) Providing information to the Legislative Research Commission under:
- 20 1. KRS 139.519 for purposes of the sales and use tax refund on building
21 materials used for disaster recovery;
- 22 2. KRS 141.436 for purposes of the energy efficiency products credits;
- 23 3. KRS 141.437 for purposes of the ENERGY STAR home and the
24 ENERGY STAR manufactured home credits;
- 25 4. KRS 148.544 for purposes of the film industry incentives;
- 26 5. KRS 154.26-095 for purposes of the Kentucky industrial revitalization
27 tax credits and the job assessment fees;

- 1 6. KRS 141.068 for purposes of the Kentucky investment fund;
- 2 7. KRS 141.396 for purposes of the angel investor tax credit;
- 3 8. KRS 141.389 for purposes of the distilled spirits credit;
- 4 9. KRS 141.408 for purposes of the inventory credit;
- 5 10. KRS 141.390 for purposes of the recycling and composting credit;
- 6 11. KRS 141.3841 for purposes of the selling farmer tax credit;~~and~~
- 7 12. KRS 141.4231 for purposes of the renewable chemical production tax
- 8 credit; and

9 **13. Section 1 of this Act for the purposes of the data center sales and use**
10 **tax exemption.**

11 (3) The commissioner shall make available any information for official use only and on
12 a confidential basis to the proper officer, agency, board or commission of this state,
13 any Kentucky county, any Kentucky city, any other state, or the federal government,
14 under reciprocal agreements whereby the department shall receive similar or useful
15 information in return.

16 (4) Access to and inspection of information received from the Internal Revenue Service
17 is for department use only, and is restricted to tax administration purposes.
18 Information received from the Internal Revenue Service shall not be made available
19 to any other agency of state government, or any county, city, or other state, and shall
20 not be inspected intentionally and without authorization by any present secretary or
21 employee of the Finance and Administration Cabinet, commissioner or employee of
22 the department, or any other person.

23 (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil
24 excise tax requirements of KRS Chapter 137 and statistics of natural gas production
25 as reported to the Department of Revenue under the natural resources severance tax
26 requirements of KRS Chapter 143A may be made public by the department by
27 release to the Energy and Environment Cabinet, Department for Natural Resources.

1 (6) Notwithstanding any provision of law to the contrary, beginning with mine-map
2 submissions for the 1989 tax year, the department may make public or divulge only
3 those portions of mine maps submitted by taxpayers to the department pursuant to
4 KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-
5 out parcel areas. These electronic maps shall not be relied upon to determine actual
6 boundaries of mined-out parcel areas. Property boundaries contained in mine maps
7 required under KRS Chapters 350 and 352 shall not be construed to constitute land
8 surveying or boundary surveys as defined by KRS 322.010 and any administrative
9 regulations promulgated thereto.

10 ➔Section 3. This Act takes effect on July 1, 2021.