Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1089
(Representatives Owens, Sanford, Streyle, Nathe)
(Senators Laffen, Campbell)

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a sales tax exemption for enterprise information technology equipment and computer software purchased for use in a qualified data center; to provide for a retroactive effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Sales and use tax exemption for enterprise information technology equipment and computer software used in a qualified data center.

1. Gross receipts from sales of enterprise information technology equipment and computer software purchased for use by a qualifying business in a qualified data center are exempt from the tax imposed by this chapter. To qualify for the exemption, the enterprise information technology equipment or computer software must be incorporated into or physically located within the qualified data center. Purchases of upgraded or replacement enterprise information technology equipment and computer software for use in a qualified data center are also exempt.

2. The future owner of a proposed data center must apply to the tax commissioner to be certified as a qualified data center. The exemption provided in this section is limited to the first four facilities approved by the tax commissioner as qualified data centers. Applications must be processed in the order received by the tax commissioner. An applicant must respond to a request for additional information from the tax commissioner within thirty days of the request or the application may no longer be considered.

3. To receive the exemption at the time of purchase, the qualified business must receive from the tax commissioner a certificate that the enterprise information technology equipment or computer software which the qualified business intends to purchase qualifies for the exemption. If a certificate is not received before the purchase, the qualified business must pay the applicable tax imposed by this chapter and apply to the tax commissioner for a refund.

4. If the enterprise information technology equipment is purchased or installed by a contractor subject to the tax imposed by this chapter, the qualified business may apply for a refund of the difference between the amount remitted by the contractor and the exemption imposed or allowed by this section. Application for a refund must be made at the times and in the manner directed by the tax commissioner and must include sufficient information to permit the tax commissioner to verify the sales and use taxes paid and the exempt status of the sale or use.

5. For purposes of this section:

   a. "Computer software" includes software used or loaded at a qualified data center, software maintenance, software licensing, and software customization.

   b. "Data center" means a centralized repository for the storage, management, and dissemination of electronic data and information organized around a particular body or bodies of knowledge.

c. "Enterprise information technology equipment" includes:

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

(2) Temperature control infrastructure and power infrastructure used for transformation, distribution, or management of electricity used for the maintenance and operation of a qualified data center.

(3) Exterior dedicated business-owned substations, backup power generation systems, battery systems, or other related infrastructure.

(4) Racking systems, raised flooring, cabling, or trays necessary for the maintenance and operation of a qualified data center.

d. "Qualified business" means the owner, operator, or tenants of a qualified data center.

e. "Qualified data center" means a newly constructed or substantially refurbished facility located in this state:

(1) Comprised of one or more buildings, the primary purpose of which is to contain a data center, consisting of an aggregate amount of sixteen thousand square feet [1486 square meters] or more;

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

(3) On which construction is completed or which is substantially refurbished after December 31, 2014;

(4) Having the following attributes:

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

(b) Sophisticated fire suppression and prevention systems;

(c) Enhanced security with security features including permanent security guards; video camera surveillance; an electronic system requiring pass codes, key cards, or biometric scans such as hand scans or retinal or fingerprint recognition to restrict access to selected personnel; or other similar security features; and

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

f. "Substantially refurbished" means a data center used to house enterprise information technology equipment in which sixteen thousand square feet [1486 square meters] or more has been rebuilt, modified, or improved through methods including energy efficiency improvements, building improvements, and the installation of enterprise information technology equipment, environmental controls, and computer software.

6. In determining the total square footage of a qualified data center, the square footage of office space, meeting space, mechanical space, and other support facility spaces shall be included if those spaces are used to support the operation of enterprise information technology equipment.

7. Qualified data center owners who intend to collocate operators or tenants within the center shall provide the operators or tenants with documentation from the tax commissioner that the center meets the definition of a qualified data center under this section. Operators or tenants shall obtain and submit a copy of the documentation with all applications for sales tax exemption on information technology equipment and computer software purchased for use in the qualified data center.

SECTION 2. EFFECTIVE DATE - RETROACTIVE APPLICATION. This Act is retroactively effective, and applies to taxable events occurring after December 31, 2014.

SECTION 3. EXPIRATION DATE. This Act is effective through December 31, 2020, and after that date is ineffective.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1089.

House Vote:	Yeas 64	Nays 27	Absent 3
Senate Vote:	Yeas 45	Nays 1	Absent 1

Chief Clerk of the House

Received by the Governor at 10:44 A M. on April 8, 2015.

Approved at 2:43 P. M. on April 9, 2015.

Governor

Filed in this office this 9th day of April, 2015,

at 4:37 o'clock P M.

Secretary of State