

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH10586-MC-11A* (5/5)

Short Title: Internet Data Center Facilities Tax Exemption. (Public)

Sponsors: Representatives Cole; Starnes, Frye, Current, Clary, and Rayfield.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN INTERNET DATA CENTER FACILITIES FROM
SALES AND USE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to
read:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(8e) Eligible Internet data center. – A facility that satisfies each of the
following conditions:

- a. The facility is used primarily or is to be used primarily by a business engaged in Internet service providers and Web search portals industry 51811, as defined by the December 31, 2002, edition of the North American Industry Classification System published by the Office of Management and Budget.
- b. The facility is located or to be located on a single parcel of land or on contiguous parcels of land that are commonly owned or owned by affiliation with the operator of that facility.
- c. The facility is located or to be located in a county that was designated, at the time of application for the written determination required under sub-subdivision d. of this subdivision, an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.
- d. The Secretary of Commerce has made a written determination that at least two hundred fifty million dollars (\$250,000,000) in private funds has been or will be invested in real property or

1 eligible business property at the facility within five years after
2 the commencement of construction of the facility."

3 **SECTION 2.** G.S. 105-164.13 is amended by adding a new subdivision to
4 read:

5 **"§ 105-164.13. Retail sales and use tax.**

6 The sale at retail and the use, storage, or consumption in this State of the following
7 tangible personal property and services are specifically exempted from the tax imposed
8 by this Article:

9 ...

10 (54) Sales of electricity and eligible business property to be located and
11 used at an eligible Internet data center. As used in this subdivision,
12 'eligible business property' is property that is capitalized for tax
13 purposes under the Code and is used either:

- 14 a. For the provision of Internet service or Web search portal
15 services as contemplated by G.S. 105-164.3(8e)a., including
16 equipment cooling systems for managing the performance of
17 such property.
18 b. For the generation, transformation, transmission, distribution, or
19 management of electricity, including exterior substations and
20 other business personal property that are used for such
21 purposes.
22 c. To support related computer engineering or computer science
23 research.

24 If the level of investment required by G.S. 105-164.3(8e)d. is not
25 timely made, then the exemption provided under this subdivision is
26 forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is
27 timely made but the eligible business property is not located and used
28 at an eligible Internet data center, then the exemption provided for
29 such eligible business property under this subdivision is forfeited. If
30 the level of investment required by G.S. 105-164.3(8e)d. is timely
31 made but electricity is not used at an eligible Internet data center, then
32 the exemption provided for such electricity under this subdivision is
33 forfeited. A taxpayer that forfeits an exemption under this subdivision
34 is liable for all past taxes avoided as a result of the exemption plus
35 interest at the rate established under G.S. 105-241.1(i), computed from
36 the date the taxes would have been due if the exemption had not been
37 allowed. If the forfeiture is triggered due to the lack of a timely
38 investment required by G.S. 105-164.3(8e)d., then interest shall be
39 computed from the date the taxes would have been due if the
40 exemption had not been allowed. For all other forfeitures, interest shall
41 be computed from the time as of which the eligible business property
42 or electricity was put to a disqualifying use. The past taxes and interest
43 are due 30 days after the date the exemption is forfeited; a taxpayer

1 that fails to pay the past taxes and interest by the due date is subject to
2 the provisions of G.S. 105-236."

3 **SECTION 3.** This act becomes effective July 1, 2006, and applies to sales
4 made on or after that date.