

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1964*
Finance Committee Substitute Adopted 6/30/06

Short Title: Internet Data Center Facilities Tax Exemption.

(Public)

Sponsors:

Referred to:

May 26, 2006

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 two new subdivisions 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 NAICS.
- b. The facility is comprised of a structure or series of structures
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
eligible business property, or both, at the facility within five
years after the commencement of construction of the facility.

...

1 (23a) NAICS. – The North American Industry Classification System adopted
2 by the United States Office of Management and Budget as of
3 December 31, 2002."

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

6 **"§ 105-164.13. Retail sales and use tax.**

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

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

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

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

1 is forfeited. A taxpayer that fails to pay the past taxes and interest by
2 the due date is subject to 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.