

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2010-91
SENATE BILL 1171**

AN ACT TO MODIFY ELIGIBILITY FOR ECONOMIC INCENTIVE SALES AND USE TAX EXEMPTIONS AND REFUNDS; TO MODIFY ELIGIBILITY FOR THE ONE PERCENT PRIVILEGE TAX ON DATACENTER MACHINERY AND EQUIPMENT; AND TO MODIFY THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF COMMERCE MAY EXTEND THE BASE PERIOD FOR A JDIG GRANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3(8e) reads as rewritten:

"(8e) Eligible Internet datacenter. – A datacenter 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~~ software publishing included in industry 511210 of NAICS or an Internet activity included in industry 519130 of 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, either an enterprise tier one, two, or three area or a development tier one or two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless of any subsequent change in county enterprise or development tier status.
- 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 a combination of both, at the facility within five years after the commencement of construction of the facility."

SECTION 2. G.S. 105-164.3(23a) reads as rewritten:

"(23a) NAICS. – ~~Defined in G.S. 105-129.81~~ The North American Industry Classification System adopted by the United States Office of Management and Budget as of December 31, 2007."

SECTION 3. G.S. 105-164.13(55) reads as rewritten:

"(55) Sales of electricity for use at an eligible Internet ~~data center~~ datacenter and eligible business property to be located and used at an eligible Internet ~~data center~~ datacenter. As used in this subdivision, "eligible business property" is property that is capitalized for tax purposes under the Code and is used either:

- a. For the provision of ~~Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a.~~ a service included in the business of the primary user of the datacenter, including equipment cooling systems for managing the performance of the property.
- b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.



- c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet ~~data center, datacenter,~~ then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet ~~data center, datacenter,~~ then the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the eligible business property or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236."

SECTION 4. G.S. 105-164.14(j)(3) is amended by adding the following new sub-subdivisions to read:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

...
(3) Industries. – This subsection applies to the following industries:

...
i. Paper-from-pulp manufacturing. – Paper-from-pulp manufacturing means an industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.

...
p. Turbine manufacturing. – Turbine manufacturing means an industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic, gas, and wind. Turbine manufacturing under this provision does not include the manufacturing of aircraft turbines."

SECTION 5. G.S. 105-187.50 reads as rewritten:

"§ 105-187.50. Definitions.

The definitions in G.S. 105-164.3 apply in this Article. ~~In addition, the following definitions apply in this Article:~~

- (1) ~~Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.~~
- (2) ~~Eligible datacenter. – A datacenter that satisfies each of the following conditions:~~
 - a. ~~Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.~~
 - b. ~~The Secretary of Commerce has made a written determination of the following:~~
 - 1. ~~For facilities that are located in a development tier one area at the time of application for the written determination, that at least one hundred fifty million dollars (\$150,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made,~~

~~regardless of any subsequent change in county development tier status.~~

2. ~~For facilities that are not located in a development tier one area at the time of application for the written determination, that at least three hundred million dollars (\$300,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination thereof, within five years of the date on which the first qualifying improvement is made, regardless of any subsequent change in county development tier status.~~

- e. ~~The facility satisfies the wage standard and health insurance requirements of G.S. 105-129.83."~~

SECTION 6. G.S. 105-187.51C(a)(1) reads as rewritten:

"(1) For the provision of datacenter services, including equipment cooling systems for managing the performance of the datacenter property; hardware ~~and software~~ for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems."

SECTION 7. G.S. 105-187.51C, as amended by Section 6 of this act, reads as rewritten:

"§ 105-187.51C. Tax imposed on datacenter machinery and equipment.

(a) Tax. – A privilege tax is imposed on ~~an eligible datacenter, other than one as defined in G.S. 105-164.3(8e),~~ the owner of a datacenter that meets the requirements of subsection (a1) of this section and that purchases machinery or equipment to be located and used at the datacenter that is capitalized for tax purposes under the Code and is used either:

- (1) For the provision of datacenter services, including equipment cooling systems for managing the performance of the datacenter property; hardware for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems.
- (2) For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(a1) Requirements. – The Secretary of Commerce must certify that the datacenter meets all of the following requirements:

- (1) The investment requirements of this subdivision. The level of investment required by this subdivision must consist of private funds that have been or will be made in real and tangible personal property for the facility within five years of the date on which the first property investment is made by the owner of the facility.
 - a. For facilities located in a development tier one area, at least one hundred fifty million dollars (\$150,000,000).
 - b. For facilities located in a development tier two area or a development tier three area, at least two hundred twenty-five million dollars (\$225,000,000).
- (2) The wage standard requirements of G.S. 105-129.83.
- (3) The health insurance requirements of G.S. 105-129.83.

(a2) Second Datacenter. – A privilege tax is imposed on an owner of a datacenter that is subject to tax under subsection (a) of this section, constructs a second datacenter, and purchases machinery or equipment to be located and used at that datacenter. As used in this subsection, the owner of a datacenter includes an entity that is owned by or under common control with the owner of a datacenter subject to tax under subsection (a) of this section. The tax applies only if the second datacenter meets the following requirements and the machinery or equipment that is purchased is capitalized for tax purposes under the Code and is used for one of the purposes listed in subsection (a) of this section:

- (1) The Secretary of Commerce certifies that an investment of private funds of at least seventy-five million dollars (\$75,000,000) has been or will be made in real and tangible personal property for the facility within five years after the facility subject to tax under subsection (a) of this section is placed into

service and that the datacenter meets the requirements in subsection (a1) of this section, other than the minimum investment amount in that subsection.

(2) The two datacenters are linked through a fiber-optic connection or a similar connection.

(3) The datacenters are placed in service within five years of each other.

(a3) Contractor Option. – A contractor or subcontractor that is subject to this subsection may elect to pay tax on its purchases of machinery and equipment described in subsection (a) of this section at the rate set in this section instead of the rate set in Article 5 of this Chapter. To make this election, a contractor or subcontractor must register with the Secretary for payment of tax under this section. The following contractors and subcontractors are subject to this section:

(1) A contractor that purchases the machinery and equipment for use in the performance of a contract with the owner of a datacenter subject to tax under this section.

(2) A subcontractor that purchases the machinery and equipment for use in the performance of a contract with a general contractor that has a contract with the owner of a datacenter subject to tax under this section.

(b) Rate. Rate and Scope. – The tax is one percent (1%) of the sales price of the eligible equipment and machinery. The maximum tax is eighty dollars (\$80.00) per article. The tax does not apply to equipment and machinery of an eligible Internet datacenter that is exempt from sales tax under G.S. 105-164.13(55).

(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the combined general rate from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed at the combined general rate from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2013-2015."

SECTION 8. G.S. 143B-437.59(b) reads as rewritten:

"(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years:years, the Committee shall take one of the following actions listed in this subsection. Under no circumstances may the Committee extend the base period by more than a total of 48 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant. The actions are:

(1) If the business is still within the base period established by the Committee,Committee in at least one of the two consecutive years in which it fails to comply with any condition in the agreement, the Committee shall withhold the grant payment for any consecutive year after the second consecutive year remaining in the base period in which the business fails to comply with any condition of the agreement, and the Committee may extend the base period for up to 24 additional months. Under no circumstances may the Committee extend the base period by more than a total of 24 months. In no event shall the term of the grant be extended beyond the date set by the Committee at the time the Committee awarded the grant.as provided in this subdivision:

- a. The Committee may extend the base period for up to 24 additional months, if the business has created and maintained fewer than 1,000 jobs pursuant to its agreement.
 - b. The Committee may extend the base period for up to 48 additional months if the business has created and maintained at least 1,000 jobs pursuant to its agreement.
- (2) If the business is no longer within the base period established by the Committee, the Committee shall terminate the agreement."

SECTION 9. Section 6 of this act becomes effective January 1, 2010. Section 8 of this act is effective when it becomes law, applies to all agreements in effect on or entered into after that date, and expires January 1, 2013. The remainder of this act becomes effective July 1, 2010, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 7:14 a.m. this 11th day of July, 2010