SB 850

Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 850 (Senator Hershey, *et al.*)

Budget and Taxation

Sales and Use Tax - Exemption - Qualified Computer Technology

---

This bill provides a sales and use tax exemption for the sale of qualified computer technology for use at a qualified data center if the buyer provides the vendor with evidence of eligibility for the exemption issued by the Comptroller. An individual or a corporation is eligible for the exemption if the individual or corporation owns a qualified data center at which the individual or corporation has filled at least 5 qualified positions in a Tier I county or at least 10 qualified positions in any other county. **The bill takes effect July 1, 2019**.

Fiscal Summary

State Effect: General fund revenues decrease by a potentially significant amount beginning in FY 2020. General fund expenditures increase by $20,000 in FY 2020.

Local Effect: None.

Small Business Effect: Potential meaningful. To the extent that data centers are small businesses, they will not have to pay sales and use taxes on qualified computer technology purchases.

Analysis

Bill Summary: Qualified computer technology is defined as computer equipment or software purchased or leased for the processing, storage, retrieval, or communication of data. Qualified computer technology includes servers, routers, connections, and other enabling hardware, such as chillers and backup generators.

A qualified data center is a data center located in the State in which an individual or a corporation has invested, on or after July 1, 2019: (1) at least $2.0 million in improvements for a facility located within a Tier I county; or (2) at least $5.0 million in improvements for a facility located in another county.

A qualified position is defined as a position that: (1) is a full-time position of indefinite duration; (2) pays at least 150% of the prevailing wage for the job classification for that position, as determined by the Department of Labor, Licensing, and Regulation; (3) is newly created because a business facility begins or expands in one location in a Tier I county; and (4) is filled.

A qualified position does not include a position that is: (1) created when an employment function is shifted from an existing business facility of a qualified buyer in the State to another business facility of the same qualified buyer if the position is not a net new job in the State; (2) created through a change in ownership of a trade or business; (3) created through a consolidation, merger, or restructuring of a business entity if the position is not a net new job in the State; (4) created when an employment function is contractually shifted from an existing business entity in the State to another business entity if the position is not a net new job in the State; or (5) filled for a period of less than 12 months.

A Tier I county is a county with (1) an average rate of unemployment for the most recent 24-month period for which data are available that exceeds 150% of the average rate of unemployment for the State during that period; (2) an average rate of unemployment for the most recent 24-month period for which data are available that exceeds the average rate of unemployment for the State by at least 2 percentage points; or (3) a median household income for the most recent 24-month period for which data are available that is equal to or less than 75% of the median household income for the State during that period. A Tier I county includes a county that no longer meets any of these criteria but has met at least one of the criteria at some time during the preceding 24-month period.

To qualify for the sales and use tax exemption, an individual or a corporation must file an application for an exemption certificate with the Comptroller. An exemption certificate issued by the Comptroller must be renewed each year and may not be renewed for more than 10 consecutive years.

Background: The sales and use tax is the State's second largest source of general fund revenue, accounting for approximately $4.9 billion in fiscal 2019 and $5.0 billion in fiscal 2020, according to the December 2018 revenue forecast. **Exhibit 1** shows the sales and use tax rates in surrounding states and the District of Columbia.

Exhibit 1
Sales and Use Tax Rates in Maryland and Surrounding States

Delaware	0.0%
District of Columbia	6.0%; 10.0% for liquor sold for on-the-premises consumption and restaurant meals; 10.25% for alcoholic beverages for consumption off the premises, tickets to specified sporting events, and specified rental vehicles
Maryland	6.0% 9.0% for alcoholic beverages
Pennsylvania	6.0% plus 1.0% or 2.0% in certain local jurisdictions
Virginia*	5.3%; 2.5% for eligible food items; both rates include 1.0% for local jurisdictions
West Virginia	6.0% plus 0.5% (in two municipalities) or 1.0% (in 41 municipalities)

*An additional state tax of 0.7% is imposed in localities in Northern Virginia and the Hampton Roads region and an additional 1.7% is imposed in localities in the Historic Triangle.

Virginia Sales Tax Exemption for Computer Equipment Used at a Data Center

Based on reports, there are approximately 700 data centers in Virginia, with nearly 70% of global Internet activity going through data centers located in Northern Virginia.

Virginia provides a state sales tax exemption for computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of a data center in the state. The exemption expires June 30, 2035. It is estimated that the sales tax exemption in Virginia resulted in a $65 million revenue loss in fiscal 2017.

Data Center Frontier reports that 27 states offer incentives to the operators of data centers, including 7 states that introduced tax incentives in 2015.

Tier I Counties

The following jurisdictions are Tier 1 counties for purposes of the One Maryland Tax Credit: Baltimore City and Allegany, Caroline, Dorchester, Garrett, Kent, Somerset, Washington, Wicomico, and Worcester counties.

State Revenues: General fund revenues may decrease by a potentially significant amount beginning in fiscal 2020 to the extent qualified data centers meet the investment requirements of the bill. The amount of the revenue decrease depends on the amount and cost of qualified computer technology that is purchased by qualified data centers, neither of which can be reliably estimated.

The Maryland Department of Commerce (Commerce) advises that there are generally two types of stand-alone data center operations. The first type is a facility that is operated by a corporate entity to host its own data. Commerce reports that T. Rowe's Price's Washington County data center is an example of this type of data center. The second type of data center is operated by a third party to host other companies' data. Commerce indicates that Byte Grid's data center in Silver Spring, and Amazon Web Services' (AWS) cloud hosting centers in Northern Virginia are examples of this type of data center.

Commerce reports that employment and capital investment will vary among the different types of data centers. Many data centers, including AWS, are often configured as multi-building campuses. Commerce notes that a recently proposed data center campus consisting of three to five buildings, and employing 35-40 people per building, proposed investing $200 million for capital improvements, including approximately $150 million for servers, cooling systems, and energy management. Commerce advises that capital expenditures related to servers is a semi-reoccurring cost because operators generally replace these items on a five-year cycle.

As a point of reference, qualified computer technology purchases of $150 million by data center operators would decrease general fund revenues by $9 million, pursuant to the exemption provided by the bill.

State Expenditures: The Comptroller's Office will incur a one-time expenditure of $20,000 in fiscal 2020 to develop the new exemption form.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Commerce; Maryland Association of Counties; Comptroller's Office; Department of Labor, Licensing, and Regulation; State Department of Assessments and Taxation; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2019
an/hlb

Analysis by: Michael Sanelli

Direct Inquiries to:
(410) 946-5510
(301) 970-5510