HB 905

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 905 (Delegate Charkoudian)

Ways and Means and Economic Matters

Sales and Use Tax Exemption – Qualified Data Center Personal Property – Eligibility

---

This bill alters the definition of "qualified data center" for purposes of a State sales and use tax exemption for qualified data centers. **The bill takes effect July 1, 2024, and applies to certificates of eligibility issued after June 30, 2024.**

Fiscal Summary

State Effect: General fund and Blueprint for Maryland's Future Fund (BMFF) revenues may increase beginning in FY 2025 to the extent that total sales tax exemptions claimed decrease because fewer data centers qualify for exemptions under the bill. However, a reliable estimate of any increase is not feasible as it depends on how many data centers continue to qualify and the amount of exemptions they claim. Expenditures are not affected.

Local Effect: To the extent that local jurisdictions reduce or eliminate the percentage of data center personal property and the changes to existing eligibility requirements result in additional or fewer persons becoming eligible for the personal property tax reduction, local revenues are affected accordingly. Local expenditures are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill alters the definition of a qualified data center by adding the following conditions that must be met by a data center to be considered eligible for the sales and use tax exemption:

- require all contractors and subcontractors hired for the construction or maintenance of the data center to pay the prevailing wage as determined by the Maryland Department of Labor;
- hire registered apprentices to perform at least 12.5% of the total work hours required for the construction and maintenance of the data center;
- install qualified battery storage;
- to the extent practicable, incorporate on-site solar energy generation; and
- if long-term contracts for procurement of energy from offshore wind businesses are available, procure at least 15% of the energy demanded by the data center through a long-term contract with a Maryland offshore wind energy business; or if long-term contracts for procurement of energy from offshore wind energy businesses are not available, purchase Maryland solar renewable energy credits equivalent to at least 15% of the energy demanded by the data center.

Qualified battery storage is a battery storage system that is designed to (1) provide at least 5% of the backup power generation capacity required by a data center and (2) provide electric grid support.

Electric grid support is defined as the dispatch and control of a distributed energy resource by an electric company, or an aggregator of distributed energy resources, to provide services that contribute to the efficient or reliable operation of the electric grid, including (1) frequency regulation; (2) voltage support; (3) spinning reserves; (4) local or system peak demand reduction; (5) demand response; and (6) the avoidance or deferral of a transmission or distribution upgrade or capacity expansion.

Current Law: Chapter 640 of 2020 provides a sales and use tax exemption for the sale of qualified data center personal property for use at a qualified data center. The buyer must provide 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 invested at least $5.0 million in qualified data center personal property and filled at least five qualified positions, within three years after submitting an application for a sales and use tax exemption. The minimum investment only needs to total $2.0 million in a Tier I area.

Chapter 640 also authorizes local governments to reduce or eliminate the percentage of the assessment of any data center personal property used in a qualified data center. The State Department of Assessments and Taxation is authorized to adopt regulations to implement the personal property tax exemption.

A data center is defined as a building or group of buildings used to house computer systems, computer storage equipment, and associated infrastructure that businesses or other organizations use to organize, process, store, and disseminate large amounts of data.

A qualified data center is defined as a data center located in the State in which an individual or a corporation, within three years after submitting an application for the sales and use tax exemption has (1) invested at least $2.0 million in qualified data center personal property and created at least five qualified positions for a data center located within a Tier I area or (2) invested at least $5.0 million in qualified data center personal property and created at least five qualified positions for a data center located in any other area of the State. A qualified data center includes a data center that is a co-located or hosting data center where equipment, space, and bandwidth are available to lease to multiple customers and an enterprise data center owned and operated by the company it supports.

Qualified data center personal property is defined as personal property purchased or leased to establish or operate a data center. Qualified data center personal property includes (1) computer equipment or enabling software used for the processing, storage, retrieval, or communication of data, including servers, routers, connections, and other enabling hardware used in the operation of that equipment; (2) heating, ventilation, and air conditioning and mechanical systems, including chillers, cooling towers, air-handling units, pumps, energy storage or energy efficiency technology, and other capital equipment used in the operation of that equipment; and (3) equipment necessary for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and any other capital equipment necessary for these purposes.

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 State minimum wage; (3) is newly created because a data center begins or expands in a single location in the State; 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 data center in the State to another data center of related ownership 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 if 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 is 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 is 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 is 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. A Tier I area also includes an opportunity zone, as defined under § 1400z-1 of the Internal Revenue Code.

To qualify for the sales and use tax exemption, an individual or a corporation must file an application for an exemption certificate with the Department of Commerce. Each year, Commerce must provide the Comptroller with a list of individuals and corporations that qualify for the sales and use tax exemption. Within 30 days after receiving the list from Commerce, the Comptroller must issue an exemption certificate to each eligible individual and corporation. An exemption certificate issued by the Comptroller must be renewed each year and may not be renewed for more than 10 consecutive years; however, if the individual or corporation invests at least $250 million in qualified data center personal property, the exemption certificate may be renewed for up to 20 consecutive years.

State Sales and Use Tax

The sales and use tax is the State's second largest source of general fund revenue, accounting for approximately $5.9 billion in fiscal 2024 and $6.1 billion in fiscal 2025, according to the December 2023 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; 8.0% for specified soft drinks; 14.95% for transient accommodations; 18% for motor vehicle parking in commercial lots
Maryland	6.0% 9.0% for alcoholic beverages
Pennsylvania	6.0% plus 1.0% or 2.0% in certain local jurisdictions
Virginia*	5.3%; 1.0% for eligible food items; 1.0% for specified essential personal hygiene items
West Virginia	6.0% plus 1.0% in specified municipalities

* An additional state tax of (1) 0.7% is imposed in localities in Central Virginia, Northern Virginia, and the Hampton Roads region; (2) 1.0% in Charlotte, Gloucester, Halifax, Henry, Northampton, Patrick, and Pittsylvania counties, and the City of Danville; and (3) 1.7% is imposed in James City County, York County, and Williamsburg (Historic Triangle). The sales and use tax rate for food and personal hygiene products decreased to 1.0% as of January 1, 2023.

Blueprint for Maryland's Future Fund

Chapter 33 of 2022 altered the distribution of sales and use tax revenues beginning in fiscal 2023. Chapter 33 requires the Comptroller, after making certain other distributions, to pay to BMFF the following percentage of the remaining sales and use tax revenues:

- 9.2% for fiscal 2023;
- 11.0% for fiscal 2024;
- 11.3% for fiscal 2025;
- 11.7% for fiscal 2026; and
- 12.1% for fiscal 2027 and each subsequent fiscal year.

Chapter 33 also repealed the distribution of sales and use tax revenues to the BMFF from marketplace facilitators, certain out-of-state vendors, and specified digital products or digital codes.

State Fiscal Effect: Commerce reports that five data centers filed for the sales and use tax exemption with the department in fiscal 2023. The total estimated sales and use taxes that were not paid by those data centers in that year totaled $507,664.

To the extent that the bill's additional requirements reduce the number of data centers that qualify for sales and use tax exemptions, sales and use tax revenues may increase accordingly due to foregone exemptions. However, a reliable estimate is not feasible because the number of data centers that continue to qualify for the exemption is not known and because the amount of exemptions that qualified data centers claim in the future also cannot be predicted.

As noted, Chapter 33 altered the distribution of sales and use tax revenues beginning in fiscal 2023. Therefore, any change in sales and use tax revenues also affects BMFF revenues.

Local Fiscal Effect: The bill also alters the definition of a qualified data center for purposes of personal property tax assessments. To the extent that local jurisdictions reduce or eliminate the percentage of data center personal property and the changes to existing eligibility requirements result in additional or fewer persons becoming eligible for the personal property tax reduction, local revenues are affected accordingly.

Small Business Effect: To the extent that data centers are small businesses, changes to the eligibility criteria may affect whether they have to pay sales and use taxes on qualified computer technology purchases.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Commerce; Comptroller's Office; Maryland Department of Labor; Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2024
rh/mcr

Analysis by: Michael D. Sanelli

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