

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 324

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR DEDUCTIONS IN THE GROSS RECEIPTS AND COMPENSATING
TAX ACT ASSOCIATED WITH DATA CENTERS; PROVIDING FOR A PROPERTY
TAX ABATEMENT ASSOCIATED WITH DATA CENTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Gross Receipts and
Compensating Tax Act is enacted to read:

"~~[NEW MATERIAL]~~ DEDUCTION--GROSS RECEIPTS--COMPENSATING
TAX--DATA CENTERS.--

A. Receipts from the sale or lease of data center
equipment to the owner or operator of, or a qualified
colocation tenant in, a qualified data center may be deducted
from gross receipts if:

- (1) the owner, operator or qualified

1 colocation tenant delivers a data center deduction nontaxable
2 transaction certificate to the seller or lessor; and

3 (2) the eligible costs of the sale or lease
4 are incurred during the period beginning on the date
5 development of the qualified data center begins and ending
6 thirty years after the taxpayer is issued a data center
7 deduction nontaxable transaction certificate.

8 B. The value of eligible costs to the owner or
9 operator of, or a qualified colocation tenant in, a qualified
10 data center may be deducted in computing compensating tax due
11 if:

12 (1) the owner, operator or qualified
13 colocation tenant holds a valid a data center deduction
14 nontaxable transaction certificate issued by the taxation and
15 revenue department; and

16 (2) the eligible costs are incurred during the
17 period beginning on the date development of the qualified data
18 center begins and ending thirty years after the owner, operator
19 or qualified colocation tenant is issued the data center
20 deduction nontaxable transaction certificate.

21 C. The deduction provided for by this section may
22 be referred to as the "data center deduction". The purpose of
23 the data center deduction is to encourage the construction and
24 development of qualified data centers in New Mexico.

25 D. A taxpayer allowed a data center deduction shall

.210433.4

1 report the amount of the data center deduction separately and
2 as required by the taxation and revenue department. A taxpayer
3 that applies the data center deduction in computing
4 compensating tax due shall separately report each eligible cost
5 for which the data center deduction is taken.

6 E. To receive the data center deduction, a taxpayer
7 shall apply to the economic development department for a data
8 center deduction certificate of eligibility that entitles the
9 taxpayer to receive a data center deduction nontaxable
10 transaction certificate issued by the taxation and revenue
11 department. The taxpayer is eligible for the data center
12 deduction certificate of eligibility if the taxpayer is the
13 owner or operator of, or a qualified colocation tenant in:

14 (1) an existing data center; or
15 (2) a new data center for which the taxpayer
16 and one or more other taxpayers expend at least twenty-five
17 million dollars (\$25,000,000) in eligible costs for the new
18 data center during the period beginning ninety days before the
19 taxpayer applies for the data center deduction certificate of
20 eligibility and ending five years after that date.

21 F. Upon receiving a complete application for a data
22 center deduction certificate of eligibility from a taxpayer,
23 the economic development department shall verify whether the
24 taxpayer qualifies to receive it and:

25 (1) if so, issue the taxpayer the data center

.210433.4

1 deduction certificate of eligibility within sixty days after
2 receiving the application; or

3 (2) if not, respond to the taxpayer in writing
4 with the reason or reasons the taxpayer does not qualify. If
5 the economic development department fails in issuing that
6 response within sixty days after receiving the application, the
7 taxation and revenue department shall deem the taxpayer's
8 application approved and promptly issue to the taxpayer a data
9 center deduction nontaxable transaction certificate.

10 G. The taxation and revenue department shall issue
11 a data center deduction nontaxable transaction certificate,
12 which clearly displays a notice to the taxpayer that the
13 taxpayer is required to report the data center deduction
14 separately from other deductions from gross receipts, if any,
15 taken by the taxpayer, to a taxpayer that submits to it a valid
16 data center deduction certificate of eligibility issued by the
17 economic development department.

18 H. The validity of a data center deduction
19 certificate of eligibility and of a data center deduction
20 nontaxable transaction certificate is not altered by their
21 transfer to a subsequent owner, operator or qualified
22 colocation tenant of the qualified data center associated with
23 the data center deduction certificate of eligibility or data
24 center deduction nontaxable transaction certificate.

25 I. The economic development department and the

1 taxation and revenue department shall protect from public
2 disclosure the proprietary business information contained in an
3 application for a data center deduction certificate of
4 eligibility. The economic development department may publicly
5 disclose the name of a qualified data center associated with a
6 data center deduction certificate of eligibility.

7 J. The economic development department may revoke
8 the data center deduction certificate of eligibility held by a
9 taxpayer that owns, operates or is a tenant in a new data
10 center if the taxpayer fails to make the expenditures outlined
11 in Paragraph (2) of Subsection E of this section. The economic
12 development department may require such a taxpayer, other than
13 a qualified colocation tenant, to remit to the taxation and
14 revenue department the full amount of the qualified data center
15 deductions taken by the taxpayer unless the taxpayer
16 demonstrates to the economic development department that the
17 taxpayer made expenditures for eligible costs to the extent
18 feasible, in which case the economic development department
19 shall conduct a public hearing to determine the portion of the
20 amount of deductions taken by the taxpayer that the taxpayer
21 must repay. In determining that portion, the economic
22 development department shall consider the taxpayer's
23 performance in making the expenditures outlined in Paragraph
24 (2) of Subsection E of this section and the degree to which
25 circumstances beyond the taxpayer's control caused the

.210433.4

1 taxpayer's failure to make the expenditures. The taxpayer
2 shall remit to the taxation and revenue department within one
3 hundred eighty days after the determination is made the amount
4 that, in accordance with this subsection, the economic
5 development department determines is owed by the taxpayer.

6 K. Beginning in 2019, the taxation and revenue
7 department shall compile an annual report on the data center
8 deduction that includes the number of taxpayers that claimed
9 the data center deduction, the aggregate amount of the data
10 center deductions claimed and other information necessary to
11 evaluate the effectiveness of the data center deduction. The
12 taxation and revenue department shall present the report to the
13 revenue stabilization and tax policy committee and the
14 legislative finance committee with an analysis of the
15 effectiveness and cost of the data center deduction and whether
16 the data center deduction is performing the purpose for which
17 it was created.

18 L. As used in this section:

19 (1) "data center equipment" means purchased or
20 leased, tangible or intangible equipment or software, whether
21 affixed to or incorporated into real property, that is
22 essential to the operation of a qualified data center and used
23 or intended for use in the processing, storage, retrieval or
24 communication of data; "data center equipment" includes the
25 installation, refreshment, replacement and upgrade of that

.210433.4

1 equipment or software. As used in this paragraph, "equipment"
2 includes:

3 (a) component parts, servers, routers,
4 connections, monitoring systems, security systems, enabling
5 machinery, enabling equipment, enabling hardware, chillers and
6 backup generators;

7 (b) equipment necessary for the
8 transformation, generation, distribution or management of
9 electricity required to operate computer server equipment,
10 including solar generation equipment, wind generation
11 equipment, geothermal generation equipment, ice bank cooling
12 equipment, geothermal cooling equipment, evaporative cooling
13 equipment, substations, generators, uninterruptible energy
14 equipment, supplies, conduit, fuel piping, fuel storage,
15 cabling, duct banks, switches, switchboards, batteries and
16 testing equipment;

17 (c) equipment necessary to cool and
18 maintain a controlled environment for the operation of computer
19 servers and other components of a qualified data center,
20 including mechanical equipment, refrigerant piping, fuel
21 piping, fuel storage, adiabatic cooling systems, free cooling
22 systems, cooling towers, water softeners, air handling units,
23 indoor direct exchange units, fans, ducting and filters;

24 (d) water conservation systems,
25 including facilities or mechanisms designed to collect,

.210433.4

underscored material = new
~~[bracketed material] = delete~~

1 conserve or reuse water;

2 (e) equipment associated with computer
3 server equipment, chassis, networking equipment, switches,
4 racks, fiber-optic and copper cabling, trays and conduit;

5 (f) the conduit, ducting, fiber-optic
6 and copper cabling located outside the qualified data center
7 and directly related to connecting qualified data center
8 locations; and

9 (g) modular data centers and
10 preassembled components, including those used in the
11 manufacture of a modular data center;

12 (2) "eligible cost":

13 (a) means an expenditure for the
14 development, acquisition, construction or operation of a
15 qualified data center; and

16 (b) includes the cost of: 1) site
17 improvements to the qualified data center; 2) data center
18 equipment for the qualified data center; and 3) permitting,
19 site characterization, assessment, engineering and design fees
20 directly and exclusively associated with the qualified data
21 center;

22 (3) "entity" means an individual, estate,
23 trust, receiver, cooperative association, corporation, company,
24 firm, partnership, limited liability company, limited liability
25 partnership or joint venture;

.210433.4

1 (4) "existing data center" means one or more
2 contiguous or noncontiguous tracts of land in New Mexico, and
3 the structures and personal property on that land, that:

4 (a) as of February 1, 2018, have at
5 least one structure: 1) at least one hundred thousand square
6 feet in size in which installed data center equipment occupies
7 at least three thousand square feet of the structure; 2) that
8 is available for use by tenants; and 3) that has an
9 uninterruptible energy supply, generator backup power, cooling
10 systems, towers or other temperature control infrastructure;
11 and

12 (b) are or will be operated, developed
13 or expanded for use predominantly to house working servers;

14 (5) "new data center" means one or more
15 contiguous or noncontiguous tracts of land in New Mexico, and
16 the structures and personal property on that land, with one or
17 more structures:

18 (a) that, regardless of their prior use,
19 are or will be used predominantly to house working servers;

20 (b) that have or will have an
21 uninterruptible energy supply, generator backup power, cooling
22 systems, towers or other temperature control infrastructure;
23 and

24 (c) whose: 1) construction or
25 development begins on or after July 1, 2018; or 2)

.210433.4

1 reconstruction, redevelopment or expansion begins on or after
2 July 1, 2018;

3 (6) "owner" means an entity or an affiliate of
4 the entity that holds fee simple title or a long-term ground
5 lease to a qualified data center;

6 (7) "operator" means an entity, other than an
7 owner or a qualified colocation tenant, but including a
8 licensed property management company and a property lessor, or
9 an affiliate of the entity, that:

10 (a) operates a qualified data center in
11 accordance with a lease or other type of contract with the
12 owner or lessor of the qualified data center; and

13 (b) is responsible for the control,
14 oversight or maintenance of the qualified data center;

15 (8) "qualified colocation tenant" means an
16 entity that contracts with the owner or operator of a qualified
17 data center to use or occupy all or part of the qualified data
18 center for at least two years; and

19 (9) "qualified data center" means an existing
20 data center or a new data center."

21 SECTION 2. A new section of Chapter 7, Article 37 NMSA
22 1978 is enacted to read:

23 "[NEW MATERIAL] ABATEMENT OF PROPERTY TAX--DATA CENTERS.--

24 A. As provided in this section, a taxpayer shall be
25 afforded a property tax abatement of increases in property

.210433.4

1 taxes, except those caused by new mill levies or adjustments to
2 existing mill levies for yield control, that are attributable
3 to the development of a new data center, improvements to an
4 existing data center or the installation of equipment in a new
5 or existing data center. The property tax abatement associated
6 with a data center is as follows:

7 (1) for the first fifteen years of abatement,
8 one hundred percent of increases attributable to that
9 development, improvement or installation;

10 (2) for the sixteenth year of abatement,
11 sixty-seven percent of increases attributable to that
12 development, improvement or installation;

13 (3) for the seventeenth year of abatement,
14 thirty-three percent of increases attributable to that
15 development, improvement or installation; and

16 (4) for all subsequent years, no abatement.

17 B. If the ownership of a data center changes, the
18 property tax abatement provided for by this section transfers
19 to the new owner.

20 C. Nothing in this section shall be construed to
21 alter the distribution, as provided by law, of property tax
22 revenues to state and local entities. During the period of
23 property tax abatement provided for by this section, the county
24 assessor of the county in which a data center is located shall
25 continue to assess the data center property in accordance with

.210433.4

1 the county's usual assessment practices.

2 D. As used in this section, "data center" means one
3 or more contiguous tracts of land, and the structures and
4 personal property on that land, with one or more structures
5 that:

6 (1) regardless of their prior use, are or will
7 be used predominantly to house working servers; and

8 (2) have or will have an uninterruptible
9 energy supply, generator backup power, cooling systems, towers
10 or other temperature control infrastructure."

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2018.