

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO TAXATION; PROVIDING GROSS RECEIPTS TAX AND  
COMPENSATING TAX DEDUCTIONS FOR DATA CENTERS; CREATING A  
SPECIAL METHOD OF VALUATION FOR PROPERTY TAX PURPOSES FOR  
CERTAIN DATA CENTER PROPERTY.

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 co-  
location tenant in, a qualified data center may be deducted  
from gross receipts if:

- (1) the owner, operator or qualified co-

underscored material = new  
[bracketed material] = delete

1 location 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 co-location tenant in, a qualified  
10 data center may be deducted in computing compensating tax due  
11 if:

12 (1) the owner, operator or qualified co-  
13 location tenant holds a valid data center deduction nontaxable  
14 transaction certificate issued by the department; and

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

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

24 D. A taxpayer allowed a data center deduction shall  
25 report the amount of the data center deduction separately and

.218715.1

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

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

5 E. To receive the data center deduction, a taxpayer  
6 shall apply to the economic development department for a data  
7 center deduction certificate of eligibility that entitles the  
8 taxpayer to receive a data center deduction nontaxable  
9 transaction certificate issued by the taxation and revenue  
10 department. The taxpayer is eligible for the data center  
11 deduction certificate of eligibility if the taxpayer is the  
12 owner or operator of, or a qualified co-location tenant in a  
13 data center for which the taxpayer or the taxpayer and one or  
14 more other taxpayers agree to expend at least twenty-five  
15 million dollars (\$25,000,000) in eligible costs for the data  
16 center during the period beginning ninety days before the  
17 taxpayer applies for the data center deduction certificate of  
18 eligibility and ending five years after that date.

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

23 (1) if so, issue the taxpayer the data center  
24 deduction certificate of eligibility within sixty days after  
25 receiving the application; or

.218715.1

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

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

8 G. A taxpayer allowed a deduction pursuant to this  
9 section shall report the amount of the deduction separately in  
10 a manner required by the taxation and revenue department.

11 H. The validity of a data center deduction  
12 certificate of eligibility and of a data center deduction  
13 nontaxable transaction certificate is not altered by transfer  
14 to a subsequent owner, operator or qualified co-location tenant  
15 of the qualified data center associated with the data center  
16 deduction certificate of eligibility or data center deduction  
17 nontaxable transaction certificate.

18 I. The economic development department and the  
19 taxation and revenue department shall protect from public  
20 disclosure the proprietary business information contained in an  
21 application for a data center deduction certificate of  
22 eligibility. The economic development department may publicly  
23 disclose the name of a qualified data center associated with a  
24 data center deduction certificate of eligibility.

25 J. The economic development department may revoke

.218715.1

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

1 the data center deduction certificate of eligibility held by a  
2 taxpayer that owns, operates or is a co-location tenant in a  
3 qualified data center if the taxpayer fails to make the  
4 expenditures outlined in Subsection E of this section. The  
5 economic development department may require such a taxpayer,  
6 other than a qualified co-location tenant, to remit to the  
7 taxation and revenue department the full amount of the  
8 qualified data center deductions taken by the taxpayer unless  
9 the taxpayer demonstrates to the economic development  
10 department that the taxpayer made expenditures for eligible  
11 costs to the extent feasible, in which case the economic  
12 development department shall conduct a public hearing to  
13 determine the portion of the amount of deductions taken by the  
14 taxpayer that the taxpayer must repay. In determining that  
15 portion, the economic development department shall consider the  
16 taxpayer's performance in making the expenditures outlined in  
17 Subsection E of this section and the degree to which  
18 circumstances beyond the taxpayer's control caused the  
19 taxpayer's failure to make the expenditures. The taxpayer  
20 shall remit to the taxation and revenue department within one  
21 hundred eighty days after the determination is made the amount  
22 that, in accordance with this subsection, the economic  
23 development department determines is owed by the taxpayer.

24 K. The taxation and revenue department shall  
25 compile an annual report on the data center deduction that

.218715.1

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

1 includes the number of taxpayers that claimed the data center  
2 deduction, the aggregate amount of the data center deductions  
3 claimed and other information necessary to evaluate the  
4 effectiveness of the data center deduction. The taxation and  
5 revenue department shall present the report to the revenue  
6 stabilization and tax policy committee and the legislative  
7 finance committee with an analysis of the effectiveness and  
8 cost of the data center deduction and whether the data center  
9 deduction is performing the purpose for which it was created.

10 L. As used in this section:

11 (1) "data center" means one or more contiguous  
12 or noncontiguous tracts of land in New Mexico and the  
13 structures and personal property on that land, if any:

14 (a) that, regardless of prior use, are  
15 or will be used predominantly to house working computer  
16 servers;

17 (b) that have or will have an  
18 uninterrupted energy supply, generator backup power, cooling  
19 systems, towers or other temperature control infrastructure;  
20 and

21 (c) whose: 1) construction or  
22 development begins on or after July 1, 2021; or 2)  
23 reconstruction, redevelopment or expansion begins on or after  
24 July 1, 2021;

25 (2) "data center equipment" means purchased or

.218715.1

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

1 leased, tangible or intangible consumables, equipment or  
2 software, whether affixed to or incorporated into real  
3 property, that is essential to the operation of a qualified  
4 data center and used or intended for use in the processing,  
5 storage, retrieval or communication of data; "data center  
6 equipment" includes the installation, refreshment, replacement  
7 and upgrade of that equipment or software. As used in this  
8 paragraph, "equipment" includes:

9 (a) component parts, servers, routers,  
10 connections, monitoring systems, security systems, enabling  
11 machinery, enabling equipment, enabling hardware, chillers and  
12 backup generators;

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

23 (c) equipment necessary to cool and  
24 maintain a controlled environment for the operation of computer  
25 servers and other components of a qualified data center,

.218715.1

underscoring material = new  
[bracketed material] = delete

1 including mechanical equipment, refrigerant piping, fuel  
2 piping, fuel storage, adiabatic cooling systems, free cooling  
3 systems, cooling towers, water softeners, air handling units,  
4 indoor direct exchange units, fans, ducting and filters;

5 (d) water conservation systems,  
6 including facilities or mechanisms designed to collect,  
7 conserve or reuse water;

8 (e) equipment associated with computer  
9 server equipment, chassis, networking equipment, switches,  
10 racks, fiber-optic and copper cabling, trays and conduit;

11 (f) the conduit, ducting, fiber-optic  
12 and copper cabling located outside the qualified data center  
13 and directly related to connecting qualified data center  
14 locations;

15 (g) modular data centers and  
16 preassembled components, including those used in the  
17 manufacture of a modular data center; and

18 (h) electricity, fuels and water;

19 (3) "eligible cost":

20 (a) means an expenditure for the  
21 development, acquisition, construction or operation of a  
22 qualified data center; and

23 (b) includes the cost of: 1) site  
24 improvements to the qualified data center; 2) data center  
25 equipment for the qualified data center; and 3) permitting,

.218715.1



1 site characterization, assessment, engineering and design fees  
2 directly and exclusively associated with the qualified data  
3 center;

4 (4) "entity" means an individual, estate,  
5 trust, receiver, cooperative association, corporation, company,  
6 firm, partnership, limited liability company, limited liability  
7 partnership or joint venture;

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

11 (6) "operator" means an entity, other than an  
12 owner or a qualified co-location tenant, but including a  
13 licensed property management company and a property lessor, or  
14 an affiliate of the entity, that:

15 (a) operates a qualified data center in  
16 accordance with a lease or other type of contract with the  
17 owner or lessor of the qualified data center; and

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

20 (7) "qualified co-location tenant" means an  
21 entity that contracts with the owner or operator of a qualified  
22 data center to use or occupy all or part of the qualified data  
23 center for at least two years; and

24 (8) "qualified data center" means a data  
25 center that has received a certificate of eligibility."

