

ARIZONA STATE SENATE

RESEARCH STAFF



TO: MEMBERS OF THE SENATE
COMMERCE, ENERGY, AND
MILITARY COMMITTEE

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SUBJECT: Strike everything amendment to H.B. 2213, relating to data centers; incentives

Purpose

Creates, beginning September 1, 2013, tax incentives for the owner, operator or colocation tenants of an Arizona Commerce Authority-certified computer data center.

Background

The Arizona Commerce Authority (ACA) was established through Executive Order 2010-12 and was codified by the Legislature through Laws 2011, Second Special Session, Chapter 1. The mission of the ACA is to “provide private sector leadership in growing and diversifying the economy of Arizona, creating high quality employment through expansion, attraction and retention of business and marketing Arizona for the purpose of expansion, attraction and retention of businesses” (A.R.S. § 41-1502).

The strike everything amendment to H.B. 2213 defines *computer data center* as all or part of a facility that is or will be composed of one or more buildings, condominium or modular units, that may be composed of multiple business owners, that is or will be predominantly used to house working servers and that has an uninterruptible power supply, generator backup power, fire suppression and prevention systems, cooling systems, towers and other temperature control infrastructure.

The fiscal impact of this legislation is currently unknown.

Provisions

Incentive Qualifications

1. Creates, beginning September 1, 2013, tax incentives for the owner, operator or colocation tenants of a certified computer data center.
2. Instructs that all tax incentives apply from the date the ACA certifies the facility through the expiration of the certification period. The expiration of the certification period is the end of the tenth calendar year, or the end of the twentieth calendar year for a sustainable redevelopment project, in which the computer data center meets all certification requirements.
3. Requires a computer data center to create a minimum investment before or on the fifth anniversary of the certification:

- a) \$25 million, including costs of land, buildings, modular units and computer data center equipment, if the computer data center is located in a county with a population of less than 800,000 persons or in a municipality with a population of less than 50,000 persons in a county of at least 800,000 persons; or
 - b) \$50 million, including costs of land, buildings, modular units and computer data center equipment, if the computer data center is located in any other area.
4. Requires the owner or operator to notify the ACA in writing on or before the fifth anniversary of certification that the computer data center has or has not satisfied the requirements and, if so, the date on which all of the requirements were satisfied.

Incentives

5. Exempts computer data center equipment that is used in a certified computer data center by or on behalf of the owner, operator or qualified colocation tenant from the tax imposed on the retail classification.
6. Exempts the portion of gross proceeds of sale or gross income that is derived from sales to the owner, operator or colocation tenant of a certified computer data center from the tax on the utility classification.
7. Deducts the gross proceeds of sales or gross income derived from a contract entered into for the construction, modification, repair, improvement or addition to all or any part of a certified computer data center, including the installation, assembly, repair or maintenance of any computer data center equipment that is deducted from the tax base of the retail classification, from the prime contracting classification tax base.
8. Exempts data center equipment that is purchased for use in a certified computer data center by or on behalf of the owner, operator or colocation tenant from use tax.

Application for Certification

9. Requires the owner or operator to submit a certification form prescribed by and to the ACA that includes the following:
 - a) the owner's or operator's name, address and telephone number;
 - b) the address of the site where the computer data center is or will be located, including information sufficient to identify the specific building, condominium or modular unit composing the computer data center, where applicable;
 - c) the anticipated investment and job creation associated with the computer data center for which the tax incentive is being sought and whether the computer data center is anticipated to qualify as a sustainable redevelopment project; and
 - d) an affirmation, signed by an authorized executive representing the owner or operator, that the computer data center is expected to satisfy each of the certification requirements.

10. Requires the ACA, within 60 days after receiving a complete and correct form, to review the form and either issue a written statement certifying the computer data center as qualifying for the tax incentives or provide written reasons for denial.
11. Prescribes that a failure to approve or deny the form within the 60 day period constitutes certification of the computer data center.
12. Requires the ACA to send a copy of the certification to the Arizona Department of Revenue (DOR).
13. Terminates the certification at the end of the certification period.
14. Prohibits the ACA from certifying any new computer data center beginning January 1, 2024.
15. Authorizes an owner or operator to consider one or more of the buildings, condominiums or modular units (buildings) in a facility, limited to less than all of the buildings, as a separate computer data center. Allows the building to receive a separate certification if it individually meets the certification requirements.
16. Prohibits a building, unit or article of computer data equipment from being deemed to be a part of more than one computer data center.
17. Prohibits business information contained in the certification form and the written notice from being disclosed to the public. Requires business information to be transmitted to the DOR.
18. Requires the owner or operator to provide the ACA and the DOR a list of qualified colocation tenants and notify of any changes to the list.

Revocation of Certificate

19. Requires the DOR to revoke the certification if the DOR determines that requirements have not been satisfied. Allows the owner or operator to appeal the revocation.
20. Prohibits the DOR and ACA from revoking certification if the computer data center satisfies all requirements.
21. Provides that the certification period expires if the certification is revoked and allows the DOR to recapture from the owner or operator all or part of the tax incentives provided.
22. Permits the DOR to give special consideration or a temporary exemption from recapture of the tax incentives if there is extraordinary hardship due to factors beyond the control of the owner or operator. Allows the DOR to require the owner or operator to file appropriate amended tax returns to reflect any recapture of the tax incentives.

Miscellaneous

23. Requires the ACA and DOR to adopt rules and procedures as necessary for the purposes of implementing the tax incentives. Requires the ACA and DOR to collaborate in adopting the rules to avoid duplication and inconsistencies.
24. Defines *certification period, computer data center, computer data center equipment, facility, modular unit, qualified colocation tenant, sustainable redevelopment project and tax incentive*.
25. Makes technical and conforming changes.
26. Becomes effective on the general effective date.

JT/tf