

**First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0096.01 Nicole Myers x4326

**HOUSE BILL 15-1158**

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**HOUSE SPONSORSHIP**

**DelGrosso and Pabon,** Saine, Williams, Kraft-Tharp, Moreno, Joshi

**SENATE SPONSORSHIP**

**Holbert,**

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**House Committees**

Business Affairs and Labor  
Finance  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING A REFUND OF THE STATE SALES AND USE TAX PAID FOR**  
102                    **INFORMATION TECHNOLOGY EQUIPMENT THAT IS USED IN**  
103                    **CERTAIN DATA CENTERS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)*

Beginning January 1, 2016, the bill allows a sales and use tax refund to the owner, operator, or tenant of a facility that is a qualified data center or a qualified refurbished data center for the state sales or use tax paid on information technology equipment (IT equipment) that is used and maintained in the qualified data center or qualified refurbished data

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

center for at least one year. The refund also applies to IT equipment that is purchased to replace or upgrade IT equipment and IT equipment that is relocated to the state.

The bill specifies the criteria for a facility to be a qualified data center or a qualified refurbished data center, including the following:

- ! The facility and the related premises is primarily used to house and operate IT equipment and has certain fire suppression, climate control, and security systems;
- ! The facility is located in the state;
- ! The facility is comprised of one or more buildings that consist in the aggregate of at least 25,000 square feet;
- ! The facility is located on a single parcel or on contiguous or adjacent parcels of land;
- ! For a qualified data center, the total cost of constructing the facility and the investment in IT equipment for the facility is at least \$40 million within a 5-year period that begins not earlier than January 1, 2011; and
- ! For a qualified refurbished data center, all or a portion of the facility has been substantially refurbished, and the total cost of refurbishing the facility and the investment in IT equipment for the refurbished facility is at least \$20 million within a 2-year period that begins not earlier than January 1, 2014.

The owner, operator, or tenant of a facility that wants to claim the refund is required to submit an affidavit to the Colorado office of economic development (office), along with supporting documentation required by the office, stating that the facility satisfies the criteria to be a qualified data center or a qualified refurbished data center or that the tenant satisfies the criteria to be a qualified tenant.

The office is required to determine whether a facility is a qualified data center or a qualified refurbished data center and whether a tenant is a qualified tenant and to notify the department of revenue. Upon such determination, the office is required to issue a certification to the owner, operator, or tenant of the facility stating that the owner, operator, or tenant may claim a refund for the state sales and use tax paid on IT equipment that is used and maintained in the facility.

If the office determines that a facility is a qualified data center or a qualified refurbished data center, the facility retains its qualified status for 20 years from the date of the first investment in the facility for the purpose of becoming a qualified data center or a qualified refurbished data center. In addition, if a qualified data center or a qualified refurbished data center makes a later investment that satisfies the criteria to be a qualified refurbished data center, the facility's 20-year qualified status restarts as of the date of the new qualifying investment.

To claim the refund allowed by the bill, the owner or operator of

a qualified data center or a qualified refurbished data center or a qualified tenant must submit to the department of revenue a refund application, a copy of its certification from the office, and proof of payment of state sales and use tax in a form and manner to be determined by the department.

In the first year that a facility is certified as a qualified data center or a qualified refurbished data center, the owner, operator, or tenant of the facility must include in its application all of the IT equipment purchases that it made and all IT equipment that it relocated to the state during the 5-year or 2-year period, as applicable, during which the facility was making investments to become a qualified data center or a qualified refurbished data center and for which the refund is claimed. A refund is not allowed for any state sales or use tax paid for IT equipment prior to January 1, 2016.

The office is required to submit an annual report to the general assembly regarding the economic benefits of the state sales and use tax exemption on IT equipment used and maintained in qualified data centers or qualified refurbished data centers. To assist the office in preparing the report, each owner, operator, and tenant of a qualified data center or qualified refurbished data center is required to submit an annual report to the office with information requested by the office.

The department of revenue is required to promulgate rules for the implementation of the sales and use tax refund.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 8 to article  
3 26 of title 39 as follows:

4 **PART 8**

5 **SALES AND USE TAX REFUND FOR INFORMATION**

6 **TECHNOLOGY EQUIPMENT IN A QUALIFIED DATA CENTER**

7 **39-26-801. Legislative declaration.** (1) THE GENERAL ASSEMBLY  
8 HEREBY FINDS AND DECLARES THAT:

9 (a) COLORADO'S ADVANCED TECHNOLOGY INDUSTRY DIRECTLY  
10 PROVIDES AND CONTRIBUTES BILLIONS OF DOLLARS TO THE STATE'S  
11 ECONOMY;

12 (b) AS A COMPONENT OF THAT INDUSTRY, DATA CENTERS ARE AN

1       IMPORTANT ASSET AND CONTRIBUTE A SIGNIFICANT ECONOMIC BENEFIT TO  
2       THE STATE, INCLUDING HIGH-END INFORMATION TECHNOLOGY,  
3       CONSULTING, AND CONSTRUCTION EMPLOYMENT;

4               (c) THESE ASSETS, ONCE BUILT, ARE A KEY COMPONENT OF A  
5       COMPANY'S OVERALL OPERATING ENVIRONMENT AND CAN CREATE A  
6       LONG-TERM INVESTMENT IN A COMMUNITY;

7               (d) STUDIES INDICATE THAT THE STATE WOULD BENEFIT  
8       SIGNIFICANTLY FROM STATE-IMPLEMENTED INCENTIVES DESIGNED TO  
9       STIMULATE PRIVATE SECTOR INDUSTRY GROWTH;

10              (e) DATA CENTERS CAN BE A SIGNIFICANT SOURCE OF NEW  
11       REVENUE ALONG WITH TYPICAL ECONOMIC GROWTH DRIVERS SUCH AS  
12       MANUFACTURING, HEADQUARTERS, AND DISTRIBUTION CENTERS; AND

13              (f) SINCE 2005, APPROXIMATELY SEVENTEEN STATES HAVE PASSED  
14       LEGISLATION TO PROVIDE CUSTOMIZED INCENTIVES FOR DATA CENTERS,  
15       AND THOSE STATES ARE ACTIVELY RECRUITING DATA CENTER  
16       INVESTMENTS.

17              (2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT  
18       ENACTING A TAX INCENTIVE TO ENCOURAGE THE EXPANSION OF CURRENT  
19       DATA CENTER BUSINESSES, ENCOURAGE NEW DATA CENTER BUSINESSES TO  
20       LOCATE TO THE STATE, AND INVIGORATE THE STATE'S CURRENT  
21       ADVANCED TECHNOLOGY INDUSTRY'S BUSINESS ACTIVITIES IS SOUND  
22       PUBLIC POLICY.

23              **39-26-802. Definitions.** AS USED IN THIS PART 8, UNLESS THE  
24       CONTEXT OTHERWISE REQUIRES:

25              (1) "CO-LOCATION FACILITY" MEANS A FACILITY WHERE  
26       EQUIPMENT, SPACE, OR BANDWIDTH ARE AVAILABLE FOR LEASE OR  
27       RENTAL TO TENANTS.

1           (2) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

2           (3) "FACILITY" MEANS A FACILITY AND THE RELATED PREMISES  
3 THAT IS USED TO HOUSE AND OPERATE INFORMATION TECHNOLOGY  
4 EQUIPMENT AND THAT HAS THE FOLLOWING CHARACTERISTICS:

5           (a) SOPHISTICATED FIRE SUPPRESSION AND PREVENTION SYSTEMS  
6 AND ENHANCED SYSTEMS TO CONTROL THE CLIMATE WITHIN THE  
7 FACILITY; AND

8           (b) ENHANCED SECURITY MEASURES. A FACILITY IS CONSIDERED  
9 TO HAVE ENHANCED SECURITY IF IT HAS RESTRICTED ACCESS TO SELECTED  
10 PERSONNEL, PERMANENT SECURITY GUARDS, VIDEO CAMERA  
11 SURVEILLANCE, AN ELECTRONIC SYSTEM REQUIRING PASS CODES,  
12 KEYCARDS, OR BIOMETRIC SCANS, SUCH AS HAND SCANS OR RETINAL OR  
13 FINGERPRINT RECOGNITION, OR SIMILAR ENHANCED SECURITY FEATURES.

14           (4) (a) "INFORMATION TECHNOLOGY EQUIPMENT" MEANS  
15 EQUIPMENT THAT IS PHYSICALLY LOCATED AT A QUALIFIED DATA CENTER  
16 OR A QUALIFIED REFURBISHED DATA CENTER AND THAT IS NECESSARY FOR  
17 THE MAINTENANCE AND DIRECT OPERATION OF A QUALIFIED DATA CENTER  
18 OR QUALIFIED REFURBISHED DATA CENTER, INCLUDING:

19           (I) COMPUTERS AND EQUIPMENT SUPPORTING COMPUTING,  
20 NETWORKING, OR DATA STORAGE, INCLUDING SERVERS, SWITCHES,  
21 CROSS-CONNECTS, ROUTERS, AND THE APPLICATION SYSTEMS AND  
22 OPERATING SYSTEMS THAT ENABLE THE INFORMATION TECHNOLOGY  
23 EQUIPMENT;

24           (II) COOLING SYSTEMS, COOLING TOWERS, AND OTHER  
25 TEMPERATURE CONTROL INFRASTRUCTURE;

26           (III) POWER INFRASTRUCTURE FOR TRANSFORMATION,  
27 DISTRIBUTION, OR MANAGEMENT OF ELECTRICITY USED FOR THE

1 MAINTENANCE AND OPERATION OF A QUALIFIED DATA CENTER OR  
2 QUALIFIED REFURBISHED DATA CENTER, INCLUDING BUT NOT LIMITED TO  
3 EXTERIOR DEDICATED SUBSTATIONS, ON-SITE POWER GENERATION  
4 SYSTEMS, BACKUP POWER GENERATION SYSTEMS, BATTERY SYSTEMS,  
5 UNINTERRUPTIBLE POWER SUPPLIES, STRUCTURES ERECTED TO PROTECT  
6 ALL INFORMATION TECHNOLOGY EQUIPMENT FROM ANY ENVIRONMENTAL  
7 CONDITIONS, AND OTHER RELATED INFRASTRUCTURE; AND

8 (IV) RACKING SYSTEMS, SECURITY CAGES, CABINETS, CABLING,  
9 AND TRAYS, WHICH ARE NECESSARY FOR THE MAINTENANCE AND  
10 OPERATION OF THE QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED  
11 DATA CENTER.

12 (b) "INFORMATION TECHNOLOGY EQUIPMENT" INCLUDES ANY  
13 EQUIPMENT THAT HAS THE CAPABILITY TO REPLACE THE FUNCTIONALITY  
14 OF ANY OF THE EQUIPMENT SPECIFIED IN PARAGRAPH (a) OF THIS  
15 SUBSECTION (4).

16 (5) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC  
17 DEVELOPMENT CREATED IN SECTION 24-48.5-101, C.R.S.

18 (6) "OPERATOR" MEANS ANY PERSON WHO EXERCISES THE RIGHT  
19 TO CONTROL THE CONDUCT OF QUALIFIED DATA CENTER OPERATIONS OR  
20 QUALIFIED REFURBISHED DATA CENTER OPERATIONS.

21 (7) "QUALIFIED DATA CENTER" MEANS A FACILITY THAT IS  
22 LOCATED IN THE STATE THAT SATISFIES THE FOLLOWING CRITERIA:

23 (a) THE FACILITY IS COMPRISED OF ONE OR MORE BUILDINGS THAT  
24 CONSIST IN THE AGGREGATE OF AT LEAST TWENTY-FIVE THOUSAND  
25 SQUARE FEET THAT HOUSE INFORMATION TECHNOLOGY EQUIPMENT OR  
26 PROVIDE DIRECT SUPPORT FOR THE DATA CENTER OPERATIONS. IN  
27 DETERMINING WHETHER THE FACILITY HAS THE REQUIRED SQUARE

1 FOOTAGE, THE SQUARE FOOTAGE OF OFFICE SPACE, MEETING SPACE, AND  
2 MECHANICAL AND OTHER SUPPORT FACILITIES IS INCLUDED IF THE SPACES  
3 ARE IN DIRECT SUPPORT OF THE OPERATION OF INFORMATION TECHNOLOGY  
4 EQUIPMENT LOCATED AT THE FACILITY.

5 (b) THE FACILITY IS LOCATED ON A SINGLE PARCEL OR ON  
6 CONTIGUOUS OR ADJACENT PARCELS. SEPARATION OF PARCELS BY A  
7 PUBLIC ROAD OR EASEMENT DOES NOT PRECLUDE THE PARCELS FROM  
8 BEING CONTIGUOUS OR ADJACENT.

9 (c) (I) THE TOTAL COST OF CONSTRUCTING THE PORTION OF THE  
10 FACILITY THAT HOUSES INFORMATION TECHNOLOGY EQUIPMENT OR THAT  
11 PROVIDES DIRECT SUPPORT FOR DATA CENTER OPERATIONS AND THE  
12 TOTAL COST OF INVESTMENT IN INFORMATION TECHNOLOGY EQUIPMENT  
13 FOR THE FACILITY IS AT LEAST FORTY MILLION DOLLARS WITHIN A  
14 FIVE-YEAR PERIOD.

15 (II) FOR PURPOSES OF THIS PARAGRAPH (c), IN THE CASE OF A  
16 CO-LOCATION FACILITY, THE TOTAL COST OF CONSTRUCTION AND  
17 INVESTMENT IN THE FACILITY INCLUDES THE INVESTMENTS BY THE OWNER  
18 OR OPERATOR OF THE FACILITY AND ALL TENANTS OF THE FACILITY.

19 (d) INVESTMENT IN THE FACILITY COMMENCED ON OR AFTER  
20 JANUARY 1, 2011.

21 (8) "QUALIFIED REFURBISHED DATA CENTER" MEANS A FACILITY  
22 THAT IS LOCATED IN THE STATE THAT SATISFIES THE FOLLOWING CRITERIA:

23 (a) THE FACILITY IS COMPRISED OF ONE OR MORE BUILDINGS THAT  
24 CONSIST IN THE AGGREGATE OF AT LEAST TWENTY-FIVE THOUSAND  
25 SQUARE FEET THAT HOUSE INFORMATION TECHNOLOGY EQUIPMENT OR  
26 PROVIDE DIRECT SUPPORT FOR DATA CENTER OPERATIONS. IN  
27 DETERMINING WHETHER THE FACILITY HAS THE REQUIRED SQUARE

1 FOOTAGE, THE SQUARE FOOTAGE OF OFFICE SPACE, MEETING SPACE, AND  
2 MECHANICAL AND OTHER SUPPORT FACILITIES IS INCLUDED IF THE SPACES  
3 ARE IN DIRECT SUPPORT OF THE OPERATION OF INFORMATION TECHNOLOGY  
4 EQUIPMENT LOCATED AT THE FACILITY.

5 (b) THE FACILITY IS LOCATED ON A SINGLE PARCEL OR ON  
6 CONTIGUOUS OR ADJACENT PARCELS. SEPARATION OF PARCELS BY A  
7 PUBLIC ROAD OR EASEMENT DOES NOT PRECLUDE THE PARCELS FROM  
8 BEING CONTIGUOUS OR ADJACENT.

9 (c) (I) ALL OR A PORTION OF THE FACILITY IS SUBSTANTIALLY  
10 REFURBISHED AND THE TOTAL COST OF REFURBISHMENT OF THE FACILITY  
11 AND INVESTMENT IN INFORMATION TECHNOLOGY EQUIPMENT IS AT LEAST  
12 TWENTY MILLION DOLLARS WITHIN A TWO-YEAR PERIOD.

13 (II) FOR PURPOSES OF THIS PARAGRAPH (c), A FACILITY IS  
14 CONSIDERED SUBSTANTIALLY REFURBISHED IF ALL OR A PORTION OF THE  
15 FACILITY HAS BEEN REBUILT OR MODIFIED AND IS USED TO HOUSE  
16 INFORMATION TECHNOLOGY EQUIPMENT OR PROVIDE DIRECT SUPPORT FOR  
17 DATA CENTER OPERATIONS. THE INSTALLATION OF INFORMATION  
18 TECHNOLOGY EQUIPMENT, ENVIRONMENTAL CONTROL, ENERGY  
19 EFFICIENCY IMPROVEMENTS, AND OTHER BUILDING IMPROVEMENTS ARE  
20 CONSIDERED REFURBISHMENTS AND MAY BE INCLUDED WHEN  
21 DETERMINING IF A PORTION OF A FACILITY HAS BEEN REFURBISHED.

22 (III) FOR PURPOSES OF THIS PARAGRAPH (c), IN THE CASE OF A  
23 CO-LOCATION FACILITY, THE TOTAL COST OF REFURBISHMENT AND  
24 INVESTMENT INCLUDES THE INVESTMENTS BY THE OWNER OR OPERATOR  
25 OF THE FACILITY AND ALL DATA CENTER TENANTS OF THE FACILITY.

26 (d) INVESTMENT IN THE REFURBISHMENT OF THE FACILITY  
27 COMMENCED ON OR AFTER JANUARY 1, 2014.



1 (9) "QUALIFIED TENANT" MEANS A TENANT THAT LEASES OR RENTS  
2 SPACE, EQUIPMENT, OR BANDWIDTH FROM THE OWNER OR OPERATOR OF  
3 A CO-LOCATION FACILITY, THAT USES, MAINTAINS, AND PAID SALES AND  
4 USE TAX ON INFORMATION TECHNOLOGY EQUIPMENT IN A QUALIFIED DATA  
5 CENTER OR QUALIFIED REFURBISHED DATA CENTER BUT IS NOT THE OWNER  
6 OR OPERATOR OF THE FACILITY, AND THAT IS CERTIFIED TO BE A QUALIFIED  
7 TENANT OF THE FACILITY BY THE OFFICE PURSUANT TO THIS PART 8.

8 **39-26-803. Refund allowed - criteria.** (1) SUBJECT TO THE  
9 LIMITATIONS IN SUBSECTIONS (2), (3), (4), AND (5) OF THIS SECTION, FOR  
10 THE CALENDAR YEAR COMMENCING JANUARY 1, 2016, AND FOR EACH  
11 CALENDAR YEAR THEREAFTER, THE OWNER OR OPERATOR OF A QUALIFIED  
12 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED  
13 TENANT MAY CLAIM A REFUND OF STATE SALES AND USE TAX PAID BY THE  
14 OWNER, OPERATOR, OR TENANT OF A QUALIFIED DATA CENTER OR  
15 QUALIFIED REFURBISHED DATA CENTER TO THE STATE PURSUANT TO PARTS  
16 1 AND 2 OF THIS ARTICLE ON THE SALE, STORAGE, USE, OR CONSUMPTION  
17 OF INFORMATION TECHNOLOGY EQUIPMENT THAT IS USED AND  
18 MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED  
19 DATA CENTER. THE REFUND ALLOWED ALSO INCLUDES INFORMATION  
20 TECHNOLOGY EQUIPMENT THAT IS PURCHASED TO REPLACE OR UPGRADE  
21 INFORMATION TECHNOLOGY EQUIPMENT IN A QUALIFIED DATA CENTER OR  
22 QUALIFIED REFURBISHED DATA CENTER AND INFORMATION TECHNOLOGY  
23 EQUIPMENT THAT IS RELOCATED TO A QUALIFIED DATA CENTER OR  
24 QUALIFIED REFURBISHED DATA CENTER FROM OUTSIDE THE STATE.

25 (2) THE REFUND ALLOWED IN SUBSECTION (1) OF THIS SECTION  
26 APPLIES TO THE STATE SALES OR USE TAX PAID ON OR AFTER JANUARY 1,  
27 2016, FOR ANY INFORMATION TECHNOLOGY EQUIPMENT THAT IS USED AND

1 MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED  
2 DATA CENTER WITHIN TWENTY YEARS AFTER THE DATE OF THE FIRST  
3 INVESTMENT IN THE FACILITY FOR THE PURPOSE OF BECOMING A  
4 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER.

5 (3) INFORMATION TECHNOLOGY EQUIPMENT MUST BE USED AND  
6 MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED  
7 DATA CENTER FOR AT LEAST ONE YEAR, WHETHER EXPENSED OR  
8 CAPITALIZED FOR ACCOUNTING PURPOSES, DURING THE PERIOD THAT THE  
9 FACILITY IS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA  
10 CENTER; EXCEPT THAT THE REQUIREMENT THAT THE EQUIPMENT BE USED  
11 AND MAINTAINED IN A QUALIFIED DATA CENTER OR QUALIFIED  
12 REFURBISHED DATA CENTER FOR AT LEAST ONE YEAR DOES NOT APPLY TO  
13 INFORMATION TECHNOLOGY EQUIPMENT THAT FAILS OR IS DESTROYED.

14 (4) THE TOTAL AMOUNT OF TAX REFUNDS ALLOWED PURSUANT TO  
15 THIS PART 8 TO THE OWNER OR OPERATOR OF A QUALIFIED DATA CENTER  
16 OR QUALIFIED REFURBISHED DATA CENTER OR TO A QUALIFIED TENANT  
17 SHALL NOT EXCEED THREE MILLION DOLLARS IN A CALENDAR YEAR.

18 (5) FOR THE PURPOSE OF THE REFUNDS ALLOWED PURSUANT TO  
19 THIS PART 8, THE SALE, STORAGE, USE, OR CONSUMPTION OF INFORMATION  
20 TECHNOLOGY EQUIPMENT THAT IS USED AND MAINTAINED IN A QUALIFIED  
21 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER:

22 (a) DOES NOT INCLUDE BASIC CONSTRUCTION AND BUILDING  
23 MATERIALS USED IN STRUCTURES THAT WERE ERECTED TO PROTECT  
24 INFORMATION TECHNOLOGY EQUIPMENT FROM ENVIRONMENTAL  
25 CONDITIONS; AND

26 (b) DOES INCLUDE ELECTRONIC EQUIPMENT PERMANENTLY  
27 INSTALLED WITHIN THE FACILITY FOR PURPOSES OF OPERATING THE

1 FACILITY OR THE EQUIPMENT WITHIN THE FACILITY EITHER DIRECTLY OR  
2 INDIRECTLY.

3 **39-26-804. Affidavit - supporting documentation to Colorado**  
4 **office of economic development - certification.** (1) THE OWNER OR  
5 OPERATOR OF A FACILITY OR A DATA CENTER TENANT IN A FACILITY THAT  
6 WISHES TO CLAIM THE REFUND ALLOWED PURSUANT TO THIS PART 8 SHALL  
7 SUBMIT AN AFFIDAVIT TO THE OFFICE, ALONG WITH SUPPORTING  
8 DOCUMENTATION, STATING THAT THE FACILITY SATISFIES THE CRITERIA TO  
9 BE A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER  
10 OR THAT THE DATA CENTER TENANT IS A QUALIFIED TENANT. THE OFFICE  
11 SHALL DETERMINE THE TIME AND MANNER IN WHICH THE AFFIDAVITS ARE  
12 SUBMITTED. THE OFFICE SHALL BEGIN ACCEPTING AFFIDAVITS ON JULY 1,  
13 2016, AND SHALL PROVIDE AN OPPORTUNITY AT LEAST ONCE EVERY THREE  
14 MONTHS FOR OWNERS, OPERATORS, AND DATA CENTER TENANTS OF  
15 FACILITIES TO SUBMIT AFFIDAVITS AND SUPPORTING DOCUMENTATION  
16 PURSUANT TO THIS SECTION.

17 (2) (a) THE OFFICE SHALL DETERMINE WHAT SUPPORTING  
18 DOCUMENTATION THE OWNER OR OPERATOR OF A FACILITY IS REQUIRED  
19 TO SUBMIT ALONG WITH THE AFFIDAVIT PURSUANT TO SUBSECTION (1) OF  
20 THIS SECTION. AT A MINIMUM, THE OFFICE SHALL REQUIRE THAT THE  
21 OWNER OR OPERATOR OF A FACILITY PROVIDE THE FOLLOWING TO THE  
22 OFFICE:

23 (I) THE COST TO CONSTRUCT OR REFURBISH THE FACILITY OR THE  
24 COST TO RELOCATE A FACILITY FROM OUTSIDE THE STATE, AS APPLICABLE,  
25 AND THE AMOUNT OF THE INVESTMENT IN INFORMATION TECHNOLOGY  
26 EQUIPMENT; AND

27 (II) WHEN THE COSTS TO CONSTRUCT OR REFURBISH THE FACILITY

1 OR THE COSTS TO RELOCATE A FACILITY FROM OUTSIDE THE STATE WERE  
2 INCURRED AND WHEN THE INVESTMENT COSTS IN INFORMATION  
3 TECHNOLOGY EQUIPMENT WERE INCURRED.

4 (b) THE OFFICE SHALL DETERMINE WHAT SUPPORTING  
5 DOCUMENTATION A TENANT NEEDS TO SUBMIT TO THE OFFICE TO  
6 ESTABLISH THAT THE TENANT IS A QUALIFIED TENANT OF A QUALIFIED  
7 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER. A TENANT IS  
8 REQUIRED TO SUBMIT SUCH DOCUMENTATION TO THE OFFICE IN A FORM  
9 AND MANNER TO BE DETERMINED BY THE OFFICE.

10 (3) IN SUBMITTING THE INFORMATION REQUIRED BY SUBSECTION  
11 (2) OF THIS SECTION, IF THE OWNER OR OPERATOR OF A CO-LOCATION  
12 FACILITY IS NOT ABLE TO OBTAIN ORIGINAL PURCHASE DOCUMENTATION  
13 FROM DATA CENTER TENANTS OF THE CO-LOCATION FACILITY THAT USE  
14 AND MAINTAIN INFORMATION TECHNOLOGY EQUIPMENT WITHIN THE  
15 FACILITY, THE OWNER OR OPERATOR MAY USE REASONABLE ESTIMATION  
16 METHODS AS DETERMINED BY THE OFFICE TO PROJECT THE INVESTMENT  
17 COSTS.

18 (4) IN ADDITION TO THE SUPPORTING DOCUMENTATION TO BE  
19 SUBMITTED WITH THE AFFIDAVIT PURSUANT TO SUBSECTION (1) OF THIS  
20 SECTION, THE OFFICE MAY REQUIRE THE OWNER OR OPERATOR OF A  
21 FACILITY OR THE DATA CENTER TENANT OF A CO-LOCATION FACILITY TO  
22 SUBMIT INFORMATION TO THE OFFICE REGARDING THE IMPACT THAT THE  
23 REFUND ALLOWED IN THIS PART 8 HAD ON THE OWNER, OPERATOR, OR  
24 DATA CENTER TENANT'S DECISION TO LOCATE OR EXPAND A BUSINESS,  
25 MAKE INVESTMENTS, AND HIRE EMPLOYEES IN THE STATE. IF THE OWNER,  
26 OPERATOR, OR DATA CENTER TENANT OF A CO-LOCATION FACILITY FAILS  
27 TO PROVIDE THE INFORMATION REQUESTED BY THE OFFICE, THE OFFICE


1 MAY DENY STATUS AS A QUALIFIED DATA CENTER, QUALIFIED  
2 REFURBISHED DATA CENTER, OR QUALIFIED TENANT, AS APPLICABLE.

3 (5) PRIOR TO MAKING A FINAL DETERMINATION OF WHETHER A  
4 FACILITY IS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA  
5 CENTER, OR WHETHER A DATA CENTER TENANT OF A CO-LOCATION  
6 FACILITY IS A QUALIFIED TENANT, THE OFFICE SHALL CONSULT WITH THE  
7 COLORADO ECONOMIC DEVELOPMENT COMMISSION CREATED IN SECTION  
8 24-46-102, C.R.S., REGARDING WHETHER THE FACILITY OR THE DATA  
9 CENTER TENANT SATISFIES THE CRITERIA TO BE A QUALIFIED DATA  
10 CENTER, QUALIFIED REFURBISHED DATA CENTER, OR QUALIFIED TENANT,  
11 AS APPLICABLE.

12 (6) IF, BASED ON THE INFORMATION PROVIDED TO THE OFFICE  
13 PURSUANT TO THIS SECTION, THE OFFICE DETERMINES THAT A FACILITY  
14 SATISFIES THE CRITERIA TO BE A QUALIFIED DATA CENTER OR QUALIFIED  
15 REFURBISHED DATA CENTER OR DETERMINES THAT A DATA CENTER  
16 TENANT SATISFIES THE CRITERIA TO BE A QUALIFIED TENANT, THE OFFICE  
17 SHALL NOTIFY THE DEPARTMENT AND ISSUE A CERTIFICATION TO THE  
18 OWNER OR OPERATOR OF THE FACILITY OR THE DATA CENTER TENANT OF  
19 A FACILITY STATING THAT THE OWNER OR OPERATOR OR THE DATA CENTER  
20 TENANT, AS APPLICABLE, MAY CLAIM A REFUND PURSUANT TO THIS  
21 SECTION FOR THE STATE SALES AND USE TAX PAID ON INFORMATION  
22 TECHNOLOGY EQUIPMENT THAT IS USED AND MAINTAINED IN THE  
23 FACILITY.

24 (7) IF THE OFFICE DETERMINES THAT A FACILITY IS A QUALIFIED  
25 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER, THE FACILITY  
26 RETAINS ITS QUALIFIED STATUS FOR TWENTY YEARS FROM THE DATE OF  
27 THE FIRST INVESTMENT IN THE FACILITY FOR THE PURPOSE OF BECOMING

1 A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER  
2 SUBJECT TO COMPLIANCE BY THE DATA CENTER OWNER OR OPERATOR  
3 WITH THE ONGOING REPORTING REQUIREMENTS SPECIFIED IN SECTION  
4 39-26-808 (2).

5   
6 (8) A FACILITY THAT IS CERTIFIED AS A QUALIFIED DATA CENTER  
7 OR QUALIFIED REFURBISHED DATA CENTER PURSUANT TO THIS SECTION  
8 RETAINS ITS QUALIFIED STATUS REGARDLESS OF ANY DIRECT OR INDIRECT  
9 FUTURE TRANSFER, SALE, OR DISPOSITION OF THE FACILITY.

10 (9) A FACILITY IS ELIGIBLE TO BE CERTIFIED AS A QUALIFIED DATA  
11 CENTER OR A QUALIFIED REFURBISHED DATA CENTER PURSUANT TO THIS  
12 PART 8 FOR ONLY ONE TWENTY-YEAR CERTIFICATION PERIOD. ANY  
13 FACILITY THAT HAS BEEN CERTIFIED AS A QUALIFIED DATA CENTER OR  
14 QUALIFIED REFURBISHED DATA CENTER PURSUANT TO THIS PART 8 IS NOT  
15 ELIGIBLE TO BE CERTIFIED OR RECERTIFIED AS A QUALIFIED DATA CENTER  
16 OR QUALIFIED REFURBISHED DATA CENTER AFTER THE INITIAL  
17 CERTIFICATION.

18 **39-26-805. Refund application.** (1) TO CLAIM THE REFUND  
19 ALLOWED BY THIS PART 8, THE OWNER OR OPERATOR OF A QUALIFIED  
20 DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED  
21 TENANT MUST SUBMIT A REFUND APPLICATION AND A COPY OF ITS  
22 CERTIFICATION FROM THE OFFICE TO THE DEPARTMENT IN A FORM AND  
23 MANNER DETERMINED BY THE DEPARTMENT. SUCH APPLICATION MUST BE  
24 SUBMITTED NO EARLIER THAN JANUARY 1 AND NO LATER THAN APRIL 1 OF  
25 THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR FOR WHICH THE  
26 REFUND IS CLAIMED; EXCEPT THAT, FOR REFUNDS CLAIMED FOR CALENDAR  
27 YEARS PRIOR TO THE FIRST CALENDAR YEAR IN WHICH A FACILITY IS

1 CERTIFIED AS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED  
2 DATA CENTER, THE APPLICATION FOR ALL SUCH YEARS MUST BE  
3 SUBMITTED NO EARLIER THAN JANUARY 1 AND NO LATER THAN APRIL 1 OF  
4 THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE  
5 FACILITY WAS CERTIFIED AS A QUALIFIED DATA CENTER OR QUALIFIED  
6 REFURBISHED DATA CENTER. THIS SUBSECTION (1) SHALL NOT BE  
7 CONSTRUED TO REQUIRE THE OWNER OF A CO-LOCATION FACILITY TO BE  
8 RESPONSIBLE FOR SUBMITTING A REFUND APPLICATION ON BEHALF OF ANY  
9 TENANT OF THE CO-LOCATION FACILITY.

10 (2) THE APPLICATION REQUIRED BY SUBSECTION (1) OF THIS  
11 SECTION SHALL BE ACCOMPANIED BY PROOF OF PAYMENT OF STATE SALES  
12 AND USE TAXES PAID BY THE OWNER OR OPERATOR OF A QUALIFIED DATA  
13 CENTER OR QUALIFIED REFURBISHED DATA CENTER OR PAID BY A  
14 QUALIFIED TENANT IN THE IMMEDIATELY PRECEDING CALENDAR YEAR;  
15 EXCEPT THAT, IN THE FIRST YEAR IN WHICH A FACILITY IS CERTIFIED AS A  
16 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER, THE  
17 APPLICATION FOR REFUND SHALL INCLUDE ALL PURCHASES MADE AND ALL  
18 INFORMATION TECHNOLOGY EQUIPMENT RELOCATED TO THE STATE  
19 DURING THE QUALIFICATION PERIOD SPECIFIED IN SECTION 39-26-802 (7)  
20 AND (8) AND FOR WHICH THE REFUND IS CLAIMED.

21 (3) THE APPLICATION REQUIRED BY SUBSECTION (1) OF THIS  
22 SECTION MUST ALSO INCLUDE ANY ADDITIONAL INFORMATION THAT THE  
23 DEPARTMENT MAY REQUIRE BY RULE, WHICH MAY INCLUDE, WITHOUT  
24 LIMITATION, A DETAILED LIST OF ALL EXPENDITURES THAT SUPPORT A  
25 CLAIM FOR A REFUND, THE NAME AND ADDRESS OF AN INDIVIDUAL WHO  
26 MAINTAINS RECORDS OF SUCH EXPENDITURES, AND A STATEMENT THAT  
27 THE QUALIFIED DATA CENTER, QUALIFIED REFURBISHED DATA CENTER, OR

1 QUALIFIED TENANT AGREES TO FURNISH RECORDS OF ALL SUCH  
2 EXPENDITURES TO THE DEPARTMENT UPON REQUEST. A REFUND IS NOT  
3 ALLOWED IF THE QUALIFIED DATA CENTER, QUALIFIED REFURBISHED DATA  
4 CENTER, OR QUALIFIED TENANT HAS NOT COMPLIED WITH THE  
5 REQUIREMENTS OF THIS SECTION.

6 **39-26-806. Limitations - refund not allowed.**  
7 NOTWITHSTANDING THE PROVISIONS OF SECTION 39-26-703 (2) (d), ALL  
8 SALES, STORAGE, AND USE OF INFORMATION TECHNOLOGY EQUIPMENT  
9 THAT IS USED AND MAINTAINED IN A QUALIFIED DATA CENTER OR  
10 QUALIFIED REFURBISHED DATA CENTER IS ELIGIBLE FOR THE REFUND  
11 ALLOWED PURSUANT TO THIS PART 8 FOR FIVE YEARS AFTER THE DATE OF  
12 THE SALE, STORAGE, OR USE OF SUCH INFORMATION TECHNOLOGY  
13 EQUIPMENT; EXCEPT THAT NO REFUND IS ALLOWED FOR ANY STATE SALES  
14 OR USE TAX PAID ON INFORMATION TECHNOLOGY EQUIPMENT PRIOR TO  
15 JANUARY 1, 2016.

16 **39-26-807. Confidentiality.** PROPRIETARY BUSINESS  
17 INFORMATION THAT A QUALIFIED DATA CENTER, QUALIFIED REFURBISHED  
18 DATA CENTER, OR QUALIFIED TENANT SUBMITS TO THE OFFICE OR TO THE  
19 DEPARTMENT PURSUANT TO THIS PART 8, EITHER BEFORE OR AFTER  
20 OBTAINING CERTIFICATION, IS CONFIDENTIAL AND THE OFFICE AND THE  
21 DEPARTMENT SHALL NOT DISCLOSE SUCH INFORMATION TO THE PUBLIC;  
22 EXCEPT THAT THE OFFICE MAY TRANSMIT INFORMATION TO THE  
23 DEPARTMENT AS NECESSARY AND THE OFFICE AND THE DEPARTMENT MAY  
24 DISCLOSE TO THE PUBLIC THE NAME OF A FACILITY THAT HAS BEEN  
25 CERTIFIED AS A QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED  
26 DATA CENTER PURSUANT TO THIS PART 8.

27 **39-26-808. Report.** (1) NOTWITHSTANDING THE PROVISIONS OF



1 SECTION 24-1-136 (11) (a) (I), C.R.S., ON OR BEFORE NOVEMBER 1, 2017,  
2 AND ON OR BEFORE NOVEMBER 1 EVERY YEAR THEREAFTER, THE OFFICE  
3 SHALL SUBMIT A REPORT TO THE MEMBERS OF THE GENERAL ASSEMBLY  
4 THAT ANALYZES AND ESTIMATES THE ECONOMIC BENEFITS OF THE REFUND  
5 ALLOWED IN THIS PART 8.

6 (2) (a) TO ASSIST THE OFFICE IN PREPARING THE REPORT REQUIRED  
7 BY SUBSECTION (1) OF THIS SECTION, ON AN ANNUAL BASIS OR AS  
8 OTHERWISE REQUIRED BY THE OFFICE, THE OWNER OR OPERATOR OF A  
9 QUALIFIED DATA CENTER OR QUALIFIED REFURBISHED DATA CENTER OR A  
10 QUALIFIED TENANT OF A FACILITY IS REQUIRED TO SUBMIT A REPORT TO  
11 THE OFFICE THAT CONTAINS INFORMATION REQUESTED BY THE OFFICE FOR  
12 THE PURPOSE OF TRACKING AND MONITORING QUALIFIED DATA CENTERS,  
13 QUALIFIED REFURBISHED DATA CENTERS, AND QUALIFIED TENANTS OF  
14 FACILITIES.

15 (b) THE INFORMATION REQUESTED BY THE OFFICE PURSUANT TO  
16 PARAGRAPH (a) OF THIS SUBSECTION (2) MAY INCLUDE, IF AVAILABLE,  
17 REPORTS ON THE NUMBER OF EMPLOYEES OR CONTRACTORS AT THE  
18 FACILITY, THE AVERAGE SALARY OF THE EMPLOYEES OR CONTRACTORS AT  
19 THE FACILITY, FACILITY OPERATING EXPENSES, CAPITAL INVESTMENTS,  
20 INFORMATION REGARDING TRAVEL TO COLORADO BY OUT-OF-STATE  
21 EMPLOYEES OR CONTRACTORS TO VISIT THE FACILITY, AND OTHER  
22 ECONOMIC BENEFITS THAT THE FACILITY PROVIDES. THE REPORTS MUST BE  
23 CONSISTENT, WHEN POSSIBLE, WITH THE INFORMATION SUBMITTED TO THE  
24 DEPARTMENT TO CLAIM THE SALES AND USE TAX REFUND PURSUANT TO  
25 SECTION 39-26-805. THE OWNER OR OPERATOR OF A QUALIFIED DATA  
26 CENTER OR QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED  
27 TENANT SHALL USE REASONABLE EFFORTS TO OBTAIN OR ESTIMATE THE

1 INFORMATION FOR ITS REPORT TO THE OFFICE.

2 (c) IF THE OWNER OR OPERATOR OF A QUALIFIED DATA CENTER OR  
3 QUALIFIED REFURBISHED DATA CENTER OR A QUALIFIED TENANT FAILS TO  
4 SUBMIT A REPORT TO THE OFFICE PURSUANT TO THIS SUBSECTION (2), THE  
5 OFFICE MAY REVOKE CERTIFICATION AS A QUALIFIED DATA CENTER,  
6 QUALIFIED REFURBISHED DATA CENTER, OR QUALIFIED TENANT.

7 **39-26-809. Rules.** THE DEPARTMENT SHALL PROMULGATE RULES  
8 FOR THE IMPLEMENTATION OF THIS PART 8 IN ACCORDANCE WITH THE  
9 "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24,  
10 C.R.S.

11 **SECTION 2. Act subject to petition - effective date.** This act  
12 takes effect at 12:01 a.m. on the day following the expiration of the  
13 ninety-day period after final adjournment of the general assembly (August  
14 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a  
15 referendum petition is filed pursuant to section 1 (3) of article V of the  
16 state constitution against this act or an item, section, or part of this act  
17 within such period, then the act, item, section, or part will not take effect  
18 unless approved by the people at the general election to be held in  
19 November 2016 and, in such case, will take effect on the date of the  
20 official declaration of the vote thereon by the governor.