

DEPARTMENT OF TAXATION

2012 Fiscal Impact Statement

1. **Patron** Barbara J. Comstock

3. **Committee** Senate Finance

4. **Title** Retail Sales and Use Tax Exemption;
Computer Equipment for Data Centers

2. **Bill Number** HB 216

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would clarify the job creation requirement in order for a data center to qualify for the Retail Sales and Use Tax exemption by allowing new jobs created by tenants of the data center to count towards the threshold job creation requirement, in addition to new jobs created by the owner of the data center. The bill would also extend the exemption to tenants of the data center if the data center and the tenants collectively meet the requirements to qualify for the data center exemption and the data center operator enters into a memorandum of understanding with the Virginia Economic Development Partnership Authority on behalf of itself and its tenants. The exemption for such data centers and tenants would be effective for purchases or leases made on or after July 1, 2012 for use in a data center that meets the requirements and enters into the memorandum of understanding on or after January 1, 2009. The provisions of the bill would expire on June 30, 2017.

The bill would also require the Department to submit a report concerning the data center exemption to the House Committee on Appropriations, House Committee on Finance, and the Senate Committee on Finance no later than November 15 of the year immediately preceding any calendar year in which the exemption is due to expire. The current data center exemption is due to expire June 30, 2020.

The current data center exemption is available for data centers that i) are located in a Virginia locality; ii) result in a new capital investment of at least \$150 million on or after January 1, 2009; and iii) create, on or after July 1, 2009, at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality, or 25 new jobs paying at least one and one-half the prevailing average wage in the locality if the data center is located in a locality that has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate or is located in an enterprise zone. The exemption currently applies only to purchases made by the data center, and does not apply to purchases made by tenants of the center.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7. Budget amendment necessary: Yes.

ITEM(S): Page 1, Revenue Estimates

8. Fiscal implications:

Administrative Costs Impact

This bill would require the Department to submit a report by November 15 of the year before the expiration of this tax exemption. In order to produce the report, the Department would have to begin accumulating data and conducting surveys soon after the bill becomes effective. If present staff is diverted to the proposed study, then the Department would not have the resources to continue performing other critical work.

Revenue Impact

To the extent that companies that do not currently qualify for the Retail Sales and Use Tax exemption for computer equipment and enabling hardware purchased or leased for use in a data center would qualify for the expanded exemption, this bill would result in a unknown, but potentially significant, loss of state and local revenues beginning in Fiscal Year 2013.

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Economic Development Partnership Authority

10. Technical amendment necessary: No.

11. Other comments:

Generally

Under current law, beginning July 1, 2010 and ending June 30, 2020, computer equipment purchased or leased by certain data centers for the processing, storage, retrieval or communication of data, including but not limited to servers, routers, connections and other enabling hardware, is exempt from the Retail Sales and Use Tax. Purchased or leased upgrades, additions to, or replacement of the computer equipment in a qualifying facility are equally exempt. The exemption does not apply to separately sold computer software or general building improvements or fixtures.

In order to be eligible for this exemption, the data center must be located in a Virginia locality and must result in new capital investment of at least \$150 million on or after January 1, 2009. The data center must also create on or after July 1, 2009, at least 50 new jobs paying at least one and one-half the prevailing average wage in the locality or at least 25 new jobs paying at least one and one-half the prevailing average wage if the locality has an unemployment rate for the preceding year of at least 150 percent of the average statewide unemployment rate or is located in an enterprise zone. The investment would need to be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority.

Proposal

This bill would clarify the job creation requirement in order for a data center to qualify for the Retail Sales and Use Tax exemption by allowing new jobs created by tenants of the data center to count towards the threshold job creation requirement, in addition to new jobs created by the owner of the data center. The bill would also extend the exemption to tenants of the data center if the data center and the tenants collectively meet the requirements to qualify for the data center exemption and the data center operator enters into a memorandum of understanding with the Virginia Economic Development Partnership Authority on behalf of itself and its tenants. The exemption for such data centers and tenants would be effective for purchases or leases made on or after July 1, 2012 for use in a data center that meets the requirements and enters into the memorandum of understanding on or after January 1, 2009. The provisions of the bill would expire on June 30, 2017.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 112 is nearly identical to this bill.

cc : Secretary of Finance

Date: 2/21/2012 AM
DLAS File Name: HB216FE161