

DEPARTMENT OF TAXATION

2013 Fiscal Impact Statement

1. **Patron** Barbara J. Comstock

3. **Committee** Senate Finance

4. **Title** Tangible Personal Property Tax; Creates
Separate Classification for Computer
Equipment in Data Centers

2. **Bill Number** HB 1699

House of Origin:

☐ Introduced

☐ Substitute

☐ Engrossed

Second House:

☒ In Committee

☐ Substitute

☐ Enrolled

5. **Summary/Purpose:**

This bill would create a separate classification of property for computer equipment and peripherals used in a data center. Localities would be authorized to tax these items at a rate not to exceed the rate applied to the general class of tangible personal property. The bill would also mandate that if computers and peripheral equipment used in a data center could fall under any of the other computer-related classifications, the computer equipment and peripherals would be taxed at the lowest rate among those specified classifications.

Under current law, computers and peripheral equipment used in a data center fall under the general class of tangible personal property, and localities must impose tangible personal property tax on such property at the same rate as imposed on all other property in the general class of tangible personal property.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

This bill would have no impact on state revenues. To the extent that a locality elects to impose tangible personal property taxes on computer equipment and peripherals used in a data center at a lower rate, and to the extent that applicable computer equipment subject to multiple rates is taxed at a lower rate than the rate imposed on property in the general class, the bill would decrease local revenues by an unknown amount.

9. **Specific agency or political subdivisions affected:**

All localities

10. **Technical amendment necessary:** No.

11. Other comments:

Background

Currently, there are forty-one categories of property that are separately classified for purposes of the Tangible Personal Property Tax, thirty-six of which can be taxed at a rate not to exceed the general rate imposed on tangible personal property, four of which can be taxed at a rate not to exceed the general rate imposed on machinery and tools, and one that may be taxed at a rate equal to the general rate imposed on real property.

A few computer-related items are separately classified under current law. These classifications include:

- Computer hardware used by businesses primarily engaged in providing data processing services to other nonrelated or nonaffiliated businesses;
- Programmable computer equipment and peripherals employed in a trade or business;
- Tangible personal property used in the provision of Internet services.

Localities may impose the tangible personal property tax on these items at a rate not to exceed that applicable to the general class of tangible personal property.

Retail Sales and Use Tax Exemption

An exemption from the Retail Sales and Use Tax is available until June 30, 2020 for 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. The exemption applies to data centers located in Virginia that meet the capital investment and job creation requirements set forth in the law. The investment must be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority.

Proposal

This bill would create a separate classification of property for computer equipment and peripherals used in a data center. Localities would be authorized to tax these items at a rate not to exceed the rate applied to the general class of tangible personal property.

Under the terms of the bill, "data center" would be defined as a facility whose primary services are the storage, management, and processing of digital data and is used to house (i) computer and network systems, including associated components, such as servers, network equipment and appliances, telecommunications, and data storage systems; (ii) systems for monitoring and managing infrastructure performance; (iii) equipment used for the transformation, transmission, distribution or management of at least one megawatt of capacity of electrical power and cooling, including substations, uninterruptible power supply systems, all electrical plant equipment, and associated air handlers; (iv) internet-related equipment and services; (v) data communications connections; (v) environmental controls; (vii) fire protection systems; and (viii) security systems and services.

The bill would also mandate that if computers and peripheral equipment used in a data center could fall under the separate classification created by this bill or the separate classification for: i) computer hardware used by businesses primarily engaged in providing data processing services; ii) programmable computer equipment and peripherals employed in a trade or business; or iii) tangible personal property used in the provision of Internet services, the computer equipment and peripherals must be taxed at the lowest rate among those specified classifications.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 1133 is similar to this bill, but would not define the term “data centers” and would mandate that the rate for qualifying equipment that falls under multiple classifications would be the lowest rate assigned to the classification.

House Bill 1522 would create a separate classification of property for motor vehicles leased by a county, city, town or constitutional officer if the locality or constitutional officer is obligated by the terms of the lease to pay tangible personal property tax on the motor vehicle.

House Bill 1860 and Senate Bill 1236 (identical) would: i) create a separate classification for valuation purposes under the tangible personal property tax for outdoor advertising signs adjacent to rights-of-way of highways; ii) require localities to tax such signs as personal property; and iii) prohibit such signs or income generated by such signs from being considered in assessing the value of real property.

cc : Secretary of Finance

Date: 2/6/2013 KP
DLAS File Name: HB1699FE161