

DEPARTMENT OF TAXATION

2016 Fiscal Impact Statement

1. **Patron** Timothy D. Hugo

3. **Committee** Senate Finance

4. **Title** Retail Sales and Use Tax; Data Center
Exemption

2. **Bill Number** HB 872

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would extend the sunset date of the Retail Sales and Use Tax exemption for purchases of equipment by data centers and their tenants from June 30, 2020 to June 30, 2035. The bill also would provide that a data center for which a person made a capital investment of at least \$500 million on or after July 1, 2016, may count jobs relocated from a data center that previously qualified for the Retail Sales and Use Tax data center exemption when meeting the thresholds to qualify for the exemption.

The current Retail Sales and Use Tax 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) result in the creation by the data center and its tenants, on or after July 1, 2009, of 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 data center operator must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority in order to qualify for the exemption. The exemption also extends to purchases made by tenants of a data center that meets the requirements of the data center exemption.

The effective date of this bill is not specified.

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

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

8. **Fiscal implications:**

Administrative Costs

The Department considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

Though the current Retail Sales and Use Tax data center exemption is set to expire June 30, 2020, the revenue forecasts assume the extension of all expiring exemptions. As the revenue forecasts assume the extension of all expiring exemptions, extending the sunset date for the exemption to June 30, 2035, would have no revenue impact from a budget perspective.

The bill also would provide that a data center for which a person made a capital investment of at least \$500 million on or after July 1, 2016, may count jobs relocated from a data center that previously qualified for the Retail Sales and Use Tax data center exemption when meeting the thresholds to qualify for the exemption. To the extent that the Retail Sales and Use Tax data center exemption would be available to data centers that would otherwise not qualify because of the new jobs requirement, the bill would result in a unknown revenue loss to the Commonwealth. Assuming that 61.5 percent of the capital investment for a new data center would apply to equipment that qualifies for the Retail Sales and Use Tax exemption, a capital investment of \$500 million in Fiscal Year 2017 by a data center is estimated to result in a Retail Sales and Use Tax revenue loss of approximately \$6.1 million in Fiscal Year 2017.

Based on data from the Virginia Economic Development Partnership Authority regarding planned data center investment, the estimated revenue loss from the Retail Sales and Use Tax exemption for data centers is \$49.3 million in Fiscal Year 2015, \$51.1 million in Fiscal Year 2016, \$52.0 million in Fiscal Year 2017, \$53.0 million in Fiscal Year 2018, \$54.2 million in Fiscal Year 2019, \$55.4 million in Fiscal Year 2020, and \$56.6 million in Fiscal Year 2021.

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 and its tenants, if applicable, also must 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 must be made in accordance with a memorandum of understanding with the Virginia Economic Development Partnership Authority. The exemption also extends to purchases made by tenants of a data center that meets the requirements of the data center exemption.

In Fiscal Year 2015, 13 data center operators and 63 data center tenants qualified for the Retail Sales and Use Tax exemption with an estimated \$843.7 million in total qualifying investment.

Proposal

This bill would extend the sunset date of the Retail Sales and Use Tax exemption for purchases of equipment by data centers and their tenants from June 30, 2020 to June 30, 2035. The bill also would provide that a data center for which a person made a capital investment of at least \$500 million on or after July 1, 2016, may count jobs relocated from a data center that previously qualified for the Retail Sales and Use Tax data center exemption when meeting the thresholds to qualify for the exemption.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 64 is identical to this bill.

cc : Secretary of Finance

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DLAS File Name: HB872FEH1161