

**§ 105-187.51C. (Expiring for sales occurring on or after July 1, 2015) Tax imposed on datacenter machinery and equipment.**

(a) Tax. – A privilege tax is imposed on the owner of a datacenter that meets the requirements of subsection (a1) of this section and that purchases machinery or equipment to be located and used at the datacenter that is capitalized for tax purposes under the Code and is used either:

- (1) For the provision of datacenter services, including equipment cooling systems for managing the performance of the datacenter property; hardware for distributed and mainframe computers and servers; data storage devices; network connectivity equipment and peripheral components and systems.
- (2) For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(a1) Requirements. – The Secretary of Commerce must certify that the datacenter meets all of the following requirements:

- (1) The investment requirements of this subdivision. The level of investment required by this subdivision must consist of private funds that have been or will be made in real and tangible personal property for the facility within five years of the date on which the first property investment is made by the owner of the facility.
  - a. For facilities located in a development tier one area, at least one hundred fifty million dollars (\$150,000,000).
  - b. For facilities located in a development tier two area or a development tier three area, at least two hundred twenty-five million dollars (\$225,000,000).
- (2) The wage standard requirements of G.S. 105-129.83.
- (3) The health insurance requirements of G.S. 105-129.83.

(a2) Second Datacenter. – A privilege tax is imposed on an owner of a datacenter that is subject to tax under subsection (a) of this section, constructs a second datacenter, and purchases machinery or equipment to be located and used at that datacenter. As used in this subsection, the owner of a datacenter includes an entity that is owned by or under common control with the owner of a datacenter subject to tax under subsection (a) of this section. The tax applies only if the second datacenter meets the following requirements and the machinery or equipment that is purchased is capitalized for tax purposes under the Code and is used for one of the purposes listed in subsection (a) of this section:

- (1) The Secretary of Commerce certifies that an investment of private funds of at least seventy-five million dollars (\$75,000,000) has been or will be made in real and tangible personal property for the facility within five years after the facility subject to tax under subsection (a) of this section is placed into service and that the datacenter meets the requirements in subsection (a1) of this section, other than the minimum investment amount in that subsection.
- (2) The two datacenters are linked through a fiber-optic connection or a similar connection.
- (3) The datacenters are placed in service within five years of each other.

(a3) Contractor Option. – A contractor or subcontractor that is subject to this subsection may elect to pay tax on its purchases of machinery and equipment described in subsection (a) of this section at the rate set in this section instead of the rate set in Article 5 of this Chapter. To make this election, a contractor or subcontractor must register with the Secretary for payment

of tax under this section. The following contractors and subcontractors are subject to this section:

- (1) A contractor that purchases the machinery and equipment for use in the performance of a contract with the owner of a datacenter subject to tax under this section.
- (2) A subcontractor that purchases the machinery and equipment for use in the performance of a contract with a general contractor that has a contract with the owner of a datacenter subject to tax under this section.

(b) Rate and Scope. – The tax is one percent (1%) of the sales price of the eligible equipment and machinery. The maximum tax is eighty dollars (\$80.00) per article. The tax does not apply to equipment and machinery of an eligible Internet datacenter that is exempt from sales tax under G.S. 105-164.13(55).

(c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is not timely made, then the rate provided under this section is forfeited. If the required level of investment is timely made but any eligible machinery and equipment is not located and used at an eligible datacenter, then the rate provided for that machinery and equipment under this section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales and use taxes avoided as a result of the forfeiture, computed at the applicable State and local rates from the date the taxes would otherwise have been due, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by this section, then interest is computed from the date the sales or use tax would otherwise have been due. For all other forfeitures, interest is computed from the time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed against the State sales or use tax owed as a result of the forfeiture provisions of this subsection for privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that payment of the privilege tax occurred in a period outside the statute of limitations provided under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest applies only to the reduced amount. The past taxes and interest are due 30 days after the date of forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.

(d) Sunset. – This section expires for sales occurring on or after July 1, 2015. (2007-323, s. 31.22(b); 2009-445, s. 17; 2010-91, ss. 6, 7; 2011-330, ss. 22, 24.)