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HOUSE DRH40036-MC-42B (01/28)

Short Title: Sales Tax Exemption for Datacenter Equipment. (Public)

Sponsors: Representatives Saine, B. Brown, Hager, and Hanes (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE DATACENTER INFRASTRUCTURE ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 105-164.3 reads as rewritten:
5 "§ 105-164.3. Definitions.

6 The following definitions apply in this Article:

7 ...

8 (33) Qualifying datacenter. – A datacenter that satisfies each of the following
9 conditions:

10 a. The datacenter meets the wage standard and health insurance
11 requirements of G.S. 143B-437.08A.

12 b. The Secretary of Commerce has made a written determination that at
13 least seventy five million dollars (\$75,000,000) in private funds has
14 been or will be invested by one or more owners, users, or tenants of
15 the datacenter within five years of the date the owner, user, or tenant
16 of the datacenter makes its first real or tangible property investment
17 in the datacenter on or after January 1, 2012. Investments in real or
18 tangible property in the datacenter made prior to January 1, 2012,
19 may not be included in the investment required by this subdivision.

20 (33a) Purchase price. – The term has the same meaning as the term "sales price"
21 when applied to an item subject to use tax.

22 ~~(33a)~~(33b) Real property contractor. – A person that contracts to perform
23 construction, reconstruction, installation, repair, or any other service with
24 respect to real property and to furnish tangible personal property to be
25 installed or applied to real property in connection with the contract and the
26 labor to install or apply the tangible personal property that becomes part of
27 real property. The term includes a general contractor, a subcontractor, or a
28 builder for purposes of G.S. 105-164.4H.

29 ~~(33b)~~(33c) Related member. – Defined in G.S. 105-130.7A.

30 ~~(33e)~~(33d) Remote sale. – A sale of tangible personal property or digital property
31 ordered by mail, by telephone, via the Internet, or by another similar method,
32 to a purchaser who is in this State at the time the order is remitted, from a
33 retailer who receives the order in another state and delivers the property or
34 causes it to be delivered to a person in this State. It is presumed that a
35 resident of this State who remits an order was in this State at the time the
36 order was remitted.



...."

SECTION 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(55a) Sales of electricity for use at a qualifying datacenter and datacenter-support equipment to be located and used at the qualifying datacenter. As used in this subdivision, "datacenter-support equipment" is property that is capitalized for tax purposes under the Code and is used either:

- a. For the provision of a service or function included in the business of an owner, user, or tenant of the datacenter.
- b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment used for these purposes.
- c. For HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.
- d. For hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.
- e. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(33) is not timely made, the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33) is timely made but any specific datacenter-support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter-support equipment under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33) is timely made but any portion of electricity is not used at the qualifying datacenter, the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, 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 G.S. 105-164.3(33), interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the datacenter-support equipment or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. 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."

SECTION 3. This act becomes effective July 1, 2015, and applies to sales made on or after that date.