

Qualified Data Center Sales Tax Exemption; SB 98

SB 98 provides a sales tax exemption to certain firms making eligible investments in a qualified data center, as defined by the bill.

The exemption is for:

- Purchases for the development, acquisition, construction, and operation of a qualified data center made by a qualified firm, including, but not limited to, costs of:
 - Land or site improvements;
 - Buildings;
 - Data center equipment, including acquisition and permitting;
 - Lease payments;
 - Site characterization and assessment; and
 - Engineering and design;
- Labor services pertaining to the installation and maintenance of data center equipment; and
- Purchases made by a contractor for the purposes of constructing or modifying a qualified data center for a qualified firm.

“Data center equipment” is defined to include:

- Servers, routers and connections and computer equipment, monitoring and security equipment or systems;
- Equipment used in the operations of the data center;
- Equipment necessary to cool and maintain a controlled environment for operations;
- Systems designed to collect, conserve, and reuse water;
- Computer server equipment, chassis, networking equipment, switches, racks, cabling, trays and conduit; and
- Conduit, ducting, and cabling directly related to connecting one or more distributed data center locations whether located inside or outside of a data center.

The cost of electricity is excluded from the exemption.

The bill defines “qualified data center” as one or more buildings constructed, reconstructed, enlarged, remodeled, or leased in Kansas to house networked computer servers connected by a fiber transmission network for the purposes of centralizing data storage, management, and dissemination.

A “qualified firm” is defined as a business registered in Kansas that is engaged in data processing, storage, and dissemination. Telecommunications, wireless, and video service providers are explicitly excluded from the definition of a qualified firm.

Duration

The sales tax exemption is valid for 20 years, regardless of the level of investment.

Eligibility

To be eligible for the exemption, a qualified firm must:

- Receive prior approval by the Kansas Fusion Center Oversight Board, which is authorized to deny a project deemed to pose a threat to critical state infrastructure;
- Submit an application as required by the Secretary of Commerce (Secretary) and enter into an agreement upon approval;
- Commit to:
 - Making an aggregate investment of at least \$250.0 million in a qualified data center within 5 calendar years of beginning operations;
 - Beginning construction of the project within 10 years of the agreement with the Secretary;
 - Adhering to practices that will conserve, reuse, and replace water; and
 - Purchasing electricity for 10 years from the public utility providing retail electric service; and
- Create and maintain at least 20 new jobs at such data center within 2 calendar years of beginning operations.

The Secretary is required to certify to the Secretary of Revenue when the qualified firm has met the conditions to receive the sales tax exemption and provide notice if the exemption is modified, suspended, or terminated.

Additional Conditions

As a condition of receiving the exemption, the qualifying firm is required to:

- Provide information required by the Secretary for:
 - Publication of the economic development incentive program database established in continuing law;
 - The Secretary's annual report required by continuing law; and
 - Periodic review of standing and eligibility as described below; and
- Cooperate with audits undertaken by the Department of Revenue or an applicable third party as requested by the Secretary.

Periodic Review

The Secretary is permitted to conduct a review every five years of the activity of a qualified firm to ensure good standing with the State and compliance with the requirements of the bill and any relevant rules and regulations. The Secretary is required to certify to the Secretary of Revenue that firms receiving the exemption continue to meet qualifications for eligibility.

Confidential financial information and trade secrets necessary to protect legitimate competitive business interests are not subject to disclosure, except that providing them to the Legislative Division of Post Audit upon request is required.

The bill requires books and records pertaining to determination of eligibility to be available for inspection during business hours by the Secretary, or a duly authorized agent, upon 60 days' prior written notice.

Breach of Agreement

If the Secretary determines a breach in the agreement has occurred, the Secretary is required to provide written notice that the firm has 120 days to cure the breach. If the breach is not cured within 120 days, the Secretary could require the firm to repay all or a part of the amount of the sales tax exemption received and wholly or partially terminate the exemption.

Rules and Regulations Authority

The bill authorizes the Secretary or the Secretary of Revenue to adopt rules and regulations for the implementation of the bill.