HOUSE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; ENACTING THE DATA CENTER ELECTRICITY USE TAX ACT; IMPOSING AN EXCISE TAX ON THE USE OF ELECTRICITY BY A DATA CENTER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Data Center Electricity Use Tax Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Data Center Electricity Use Tax Act:

A. "data center" means one or more buildings or structures at a single site, including contiguous or adjacent parcels under common ownership or control and during all phases of construction, whose primary use is to house computer equipment for the processing, storage, retrieval or

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communication of data, with the power, cooling and other enabling infrastructure supporting that equipment, and that has a combined peak electrical demand of fifty megawatts or more, measured as the highest fifteen-minute average demand in any month; "data center" includes facilities operated under co-location, lease or similar arrangements; and "data center" excludes facilities used primarily for telecommunications network switching or for the internal operations of a non-data business located on the same site; and

B. "operator" means the person responsible for the actual physical operations of a data center.

SECTION 3. [NEW MATERIAL] IMPOSITION AND RATE OF DATA CENTER ELECTRICITY USE TAX.--

A. An excise tax on the use of electricity by a data center in the state is imposed at a rate of one and one-tenth cents ($.011) per one kilowatt-hour. The tax shall be paid by the operator of the data center.

B. The tax imposed by this section may be referred to as the "data center electricity use tax".

SECTION 4. [NEW MATERIAL] PAYMENT DUE DATE.--The data center electricity use tax shall be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

SECTION 5. [NEW MATERIAL] EXEMPTIONS.--Exempted from the data center electricity use tax are:

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A. the United States or any agency, department or instrumentality thereof;

B. the state of New Mexico or any political subdivision thereof;

C. an Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory; and

D. a foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a party.

SECTION 6. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

(1) Income Tax Act;

(2) Withholding Tax Act;

(3) Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act;

(4) Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act and Leased Vehicle Gross Receipts Tax Act;

(5) Liquor Excise Tax Act;

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(6) Local Liquor Excise Tax Act;

(7) any municipal local option gross receipts tax or municipal compensating tax;

(8) any county local option gross receipts tax or county compensating tax;

(9) Special Fuels Supplier Tax Act;

(10) Gasoline Tax Act;

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(12) Alternative Fuel Tax Act;

(13) Cigarette Tax Act;

(14) Estate Tax Act;

(15) Railroad Car Company Tax Act;

(16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act and high-wage jobs tax credit;

(17) Corporate Income and Franchise Tax Act;

(18) Uniform Division of Income for Tax Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco Products Tax Act;

(21) the telecommunications relay service

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surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;

(22) the Insurance Premium Tax Act;

(23) the Health Care Quality Surcharge Act;

(24) the Cannabis Tax Act; [~~and~~]

(25) the Health Care Delivery and Access Act; and

(26) the Data Center Electricity Use Tax Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act;

(2) Severance Tax Act;

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act;

(5) Oil and Gas Conservation Tax Act;

(6) Oil and Gas Emergency School Tax Act;

(7) Oil and Gas Ad Valorem Production Tax Act;

(8) Natural Gas Processors Tax Act;

(9) Oil and Gas Production Equipment Ad Valorem Tax Act;

(10) Copper Production Ad Valorem Tax Act;

(11) any advance payment required to be made by any act specified in this subsection, which advance payment

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shall be considered a tax for the purposes of the Tax Administration Act;

(12) Enhanced Oil Recovery Act;

(13) Natural Gas and Crude Oil Production Incentive Act; and

(14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act;

(2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(3) Uniform Unclaimed Property Act (1995);

(4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(5) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(6) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the

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Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2028.

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