

1 SENATE BILL 26

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING GROSS RECEIPTS TAX AND
12 COMPENSATING TAX DEDUCTIONS FOR DATA CENTERS; CREATING A
13 SPECIAL METHOD OF VALUATION FOR PROPERTY TAX PURPOSES FOR
14 CERTAIN DATA CENTER PROPERTY.

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

17 SECTION 1. A new section of the Gross Receipts and
18 Compensating Tax Act is enacted to read:

19 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS--COMPENSATING
20 TAX--DATA CENTERS.--

21 A. Receipts from the sale or lease of data center
22 equipment to the owner or operator of, or a qualified co-
23 location tenant in, a qualified data center may be deducted
24 from gross receipts if:

25 (1) the owner, operator or qualified co-

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1 location tenant delivers a data center deduction nontaxable
2 transaction certificate to the seller or lessor; and

3 (2) the eligible costs of the sale or lease
4 are incurred during the period beginning on the date
5 development of the qualified data center begins and ending
6 thirty years after the taxpayer is issued a data center
7 deduction nontaxable transaction certificate.

8 B. The value of eligible costs to the owner or
9 operator of, or a qualified co-location tenant in, a qualified
10 data center may be deducted in computing compensating tax due
11 if:

12 (1) the owner, operator or qualified co-
13 location tenant holds a valid data center deduction nontaxable
14 transaction certificate issued by the department; and

15 (2) the eligible costs are incurred during the
16 period beginning on the date development of the qualified data
17 center begins and ending thirty years after the owner, operator
18 or qualified co-location tenant is issued the data center
19 deduction nontaxable transaction certificate.

20 C. The deduction provided for by this section may
21 be referred to as the "data center deduction". The purpose of
22 the data center deduction is to encourage the construction and
23 development of qualified data centers in New Mexico.

24 D. A taxpayer allowed a data center deduction shall
25 report the amount of the data center deduction separately and

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1 as required by the department. A taxpayer that applies the
2 data center deduction in computing compensating tax due shall
3 separately report each eligible cost for which the data center
4 deduction is taken.

5 E. To receive the data center deduction, a taxpayer
6 shall apply to the economic development department for a data
7 center deduction certificate of eligibility that entitles the
8 taxpayer to receive a data center deduction nontaxable
9 transaction certificate issued by the taxation and revenue
10 department. The taxpayer is eligible for the data center
11 deduction certificate of eligibility if the taxpayer is the
12 owner or operator of, or a qualified co-location tenant in a
13 data center for which the taxpayer or the taxpayer and one or
14 more other taxpayers agree to expend at least twenty-five
15 million dollars (\$25,000,000) in eligible costs for the data
16 center during the period beginning ninety days before the
17 taxpayer applies for the data center deduction certificate of
18 eligibility and ending five years after that date.

19 F. Upon receiving a complete application for a data
20 center deduction certificate of eligibility from a taxpayer,
21 the economic development department shall verify whether the
22 taxpayer qualifies to receive the certificate and:

23 (1) if so, issue the taxpayer the data center
24 deduction certificate of eligibility within sixty days after
25 receiving the application; or

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1 (2) if not, respond to the taxpayer in writing
2 with the reason or reasons the taxpayer does not qualify. If
3 the economic development department fails in issuing that
4 response within sixty days after receiving the application, the
5 taxation and revenue department shall deem the taxpayer's
6 application approved and promptly issue to the taxpayer a data
7 center deduction nontaxable transaction certificate.

8 G. A taxpayer allowed a deduction pursuant to this
9 section shall report the amount of the deduction separately in
10 a manner required by the taxation and revenue department.

11 H. The validity of a data center deduction
12 certificate of eligibility and of a data center deduction
13 nontaxable transaction certificate is not altered by transfer
14 to a subsequent owner, operator or qualified co-location tenant
15 of the qualified data center associated with the data center
16 deduction certificate of eligibility or data center deduction
17 nontaxable transaction certificate.

18 I. The economic development department and the
19 taxation and revenue department shall protect from public
20 disclosure the proprietary business information contained in an
21 application for a data center deduction certificate of
22 eligibility. The economic development department may publicly
23 disclose the name of a qualified data center associated with a
24 data center deduction certificate of eligibility.

25 J. The economic development department may revoke

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1 the data center deduction certificate of eligibility held by a
2 taxpayer that owns, operates or is a co-location tenant in a
3 qualified data center if the taxpayer fails to make the
4 expenditures outlined in Subsection E of this section. The
5 economic development department may require such a taxpayer,
6 other than a qualified co-location tenant, to remit to the
7 taxation and revenue department the full amount of the
8 qualified data center deductions taken by the taxpayer unless
9 the taxpayer demonstrates to the economic development
10 department that the taxpayer made expenditures for eligible
11 costs to the extent feasible, in which case the economic
12 development department shall conduct a public hearing to
13 determine the portion of the amount of deductions taken by the
14 taxpayer that the taxpayer must repay. In determining that
15 portion, the economic development department shall consider the
16 taxpayer's performance in making the expenditures outlined in
17 Subsection E of this section and the degree to which
18 circumstances beyond the taxpayer's control caused the
19 taxpayer's failure to make the expenditures. The taxpayer
20 shall remit to the taxation and revenue department within one
21 hundred eighty days after the determination is made the amount
22 that, in accordance with this subsection, the economic
23 development department determines is owed by the taxpayer.

24 K. The taxation and revenue department shall
25 compile an annual report on the data center deduction that

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1 includes the number of taxpayers that claimed the data center
2 deduction, the aggregate amount of the data center deductions
3 claimed and other information necessary to evaluate the
4 effectiveness of the data center deduction. The taxation and
5 revenue department shall present the report to the revenue
6 stabilization and tax policy committee and the legislative
7 finance committee with an analysis of the effectiveness and
8 cost of the data center deduction and whether the data center
9 deduction is performing the purpose for which it was created.

10 L. As used in this section:

11 (1) "data center" means one or more contiguous
12 or noncontiguous tracts of land in New Mexico and the
13 structures and personal property on that land, if any:

14 (a) that, regardless of prior use, are
15 or will be used predominantly to house working computer
16 servers;

17 (b) that have or will have an
18 uninterrupted energy supply, generator backup power, cooling
19 systems, towers or other temperature control infrastructure;
20 and

21 (c) whose: 1) construction or
22 development begins on or after July 1, 2021; or 2)
23 reconstruction, redevelopment or expansion begins on or after
24 July 1, 2021;

25 (2) "data center equipment" means purchased or

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1 leased, tangible or intangible consumables, equipment or
2 software, whether affixed to or incorporated into real
3 property, that is essential to the operation of a qualified
4 data center and used or intended for use in the processing,
5 storage, retrieval or communication of data; "data center
6 equipment" includes the installation, refreshment, replacement
7 and upgrade of that equipment or software. As used in this
8 paragraph, "equipment" includes:

9 (a) component parts, servers, routers,
10 connections, monitoring systems, security systems, enabling
11 machinery, enabling equipment, enabling hardware, chillers and
12 backup generators;

13 (b) equipment necessary for the
14 transformation, generation, distribution or management of
15 electricity required to operate computer server equipment,
16 including solar generation equipment, wind generation
17 equipment, geothermal generation equipment, ice bank cooling
18 equipment, geothermal cooling equipment, evaporative cooling
19 equipment, substations, generators, uninterruptible energy
20 equipment, supplies, conduit, fuel piping, fuel storage,
21 cabling, duct banks, switches, switchboards, batteries and
22 testing equipment;

23 (c) equipment necessary to cool and
24 maintain a controlled environment for the operation of computer
25 servers and other components of a qualified data center,

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1 including mechanical equipment, refrigerant piping, fuel
2 piping, fuel storage, adiabatic cooling systems, free cooling
3 systems, cooling towers, water softeners, air handling units,
4 indoor direct exchange units, fans, ducting and filters;

5 (d) water conservation systems,
6 including facilities or mechanisms designed to collect,
7 conserve or reuse water;

8 (e) equipment associated with computer
9 server equipment, chassis, networking equipment, switches,
10 racks, fiber-optic and copper cabling, trays and conduit;

11 (f) the conduit, ducting, fiber-optic
12 and copper cabling located outside the qualified data center
13 and directly related to connecting qualified data center
14 locations;

15 (g) modular data centers and
16 preassembled components, including those used in the
17 manufacture of a modular data center; and

18 (h) electricity, fuels and water;

19 (3) "eligible cost":

20 (a) means an expenditure for the
21 development, acquisition, construction or operation of a
22 qualified data center; and

23 (b) includes the cost of: 1) site
24 improvements to the qualified data center; 2) data center
25 equipment for the qualified data center; and 3) permitting,

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1 site characterization, assessment, engineering and design fees
2 directly and exclusively associated with the qualified data
3 center;

4 (4) "entity" means an individual, estate,
5 trust, receiver, cooperative association, corporation, company,
6 firm, partnership, limited liability company, limited liability
7 partnership or joint venture;

8 (5) "owner" means an entity or an affiliate of
9 the entity that holds fee simple title or a long-term ground
10 lease to a qualified data center;

11 (6) "operator" means an entity, other than an
12 owner or a qualified co-location tenant, but including a
13 licensed property management company and a property lessor, or
14 an affiliate of the entity, that:

15 (a) operates a qualified data center in
16 accordance with a lease or other type of contract with the
17 owner or lessor of the qualified data center; and

18 (b) is responsible for the control,
19 oversight or maintenance of the qualified data center;

20 (7) "qualified co-location tenant" means an
21 entity that contracts with the owner or operator of a qualified
22 data center to use or occupy all or part of the qualified data
23 center for at least two years; and

24 (8) "qualified data center" means a data
25 center that has received a certificate of eligibility."

