

As Introduced

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Regular Session

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S. B. No. 374

Senators Smith, Blessing

Cosponsors: Senators Antonio, Blackshear, DeMora, Weinstein

To amend section 122.175 of the Revised Code to 1
prohibit new data center sales tax exemptions 2
from being granted. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 122.175 of the Revised Code be 4
amended to read as follows: 5

Sec. 122.175. (A) As used in this section: 6

(1) "Capital investment project" means a plan of 7
investment at a project site for the acquisition, construction, 8
renovation, expansion, replacement, or repair of a computer data 9
center or of computer data center equipment, but does not 10
include any of the following: 11

(a) Project costs paid before a date determined by the tax 12
credit authority for each capital investment project; 13

(b) Payments made to a related member as defined in 14
section 5733.042 of the Revised Code or to a consolidated 15
elected taxpayer or a combined taxpayer as defined in section 16
5751.01 of the Revised Code. 17

(2) "Computer data center" means a facility used or to be 18

used primarily to house computer data center equipment used or 19
to be used in conducting one or more computer data center 20
businesses, as determined by the tax credit authority. 21

(3) "Computer data center business" means, as may be 22
further determined by the tax credit authority, a business that 23
provides electronic information services as defined in division 24
(Y) (1) (c) of section 5739.01 of the Revised Code, or that leases 25
a facility to one or more such businesses. "Computer data center 26
business" does not include providing electronic publishing as 27
defined in that section. 28

(4) "Computer data center equipment" means tangible 29
personal property used or to be used for any of the following: 30

(a) To conduct a computer data center business, including 31
equipment cooling systems to manage the performance of computer 32
data center equipment; 33

(b) To generate, transform, transmit, distribute, or 34
manage electricity necessary to operate the tangible personal 35
property used or to be used in conducting a computer data center 36
business; 37

(c) As building and construction materials sold to 38
construction contractors for incorporation into a computer data 39
center. 40

(5) "Eligible computer data center" means a computer data 41
center that satisfies all of the following requirements: 42

(a) One or more taxpayers operating a computer data center 43
business at the project site will, in the aggregate, make 44
payments for a capital investment project of at least one 45
hundred million dollars at the project site during one of the 46
following cumulative periods: 47

(i) For projects beginning in 2013, six consecutive calendar years;	48 49
(ii) For projects beginning in 2014, four consecutive calendar years;	50 51
(iii) For projects beginning in or after 2015, three consecutive calendar years.	52 53
(b) One or more taxpayers operating a computer data center business at the project site will, in the aggregate, pay annual compensation that is subject to the withholding obligation imposed under section 5747.06 of the Revised Code of at least one million five hundred thousand dollars to employees employed at the project site for each year of the agreement beginning on or after the first day of the twenty-fifth month after the agreement was entered into under this section.	54 55 56 57 58 59 60 61
(6) "Person" has the same meaning as in section 5701.01 of the Revised Code.	62 63
(7) "Project site," "related member," and "tax credit authority" have the same meanings as in sections 122.17 and 122.171 of the Revised Code.	64 65 66
(8) "Taxpayer" means any person subject to the taxes imposed under Chapters 5739. and 5741. of the Revised Code.	67 68
(B) The tax credit authority may completely or partially exempt from the taxes levied under Chapters 5739. and 5741. of the Revised Code the sale, storage, use, or other consumption of computer data center equipment used or to be used at an eligible computer data center. Any such exemption shall extend to charges for the delivery, installation, or repair of the computer data center equipment subject to the exemption under this section.	69 70 71 72 73 74 75

(C) A taxpayer that proposes a capital improvement project 76
for an eligible computer data center in this state may apply to 77
the tax credit authority to enter into an agreement under this 78
section authorizing a complete or partial exemption from the 79
taxes imposed under Chapters 5739. and 5741. of the Revised Code 80
on computer data center equipment purchased by the applicant or 81
any other taxpayer that operates a computer data center business 82
at the project site and used or to be used at the eligible 83
computer data center. The director of development shall 84
prescribe the form of the application. After receipt of an 85
application, the authority shall forward copies of the 86
application to the tax commissioner, who shall review the 87
application to determine the economic impact that the proposed 88
eligible computer data center would have on the state and any 89
affected political subdivisions and submit to the authority a 90
summary of their determinations. The authority shall also 91
forward a copy of the application to the director of development 92
who shall review the application to determine the economic 93
impact that the proposed eligible computer data center would 94
have on the state and the affected political subdivisions and 95
shall submit a summary of their determinations and 96
recommendations to the authority. 97

(D) Upon review and consideration of such determinations 98
and recommendations, the tax credit authority, before October 1, 99
2027, may enter into an agreement with the applicant and any 100
other taxpayer that operates a computer data center business at 101
the project site for a complete or partial exemption from the 102
taxes imposed under Chapters 5739. and 5741. of the Revised Code 103
on computer data center equipment used or to be used at an 104
eligible computer data center if the authority determines all of 105
the following: 106

(1) The capital investment project for the eligible 107
computer data center will increase payroll and the amount of 108
income taxes to be withheld from employee compensation pursuant 109
to section 5747.06 of the Revised Code. 110

(2) The applicant is economically sound and has the 111
ability to complete or effect the completion of the proposed 112
capital investment project. 113

(3) The applicant intends to and has the ability to 114
maintain operations at the project site for the term of the 115
agreement. 116

(4) Receiving the exemption is a major factor in the 117
applicant's decision to begin, continue with, or complete the 118
capital investment project. 119

(E) An agreement entered into under this section shall 120
include all of the following: 121

(1) A detailed description of the capital investment 122
project that is the subject of the agreement, including the 123
amount of the investment, the period over which the investment 124
has been or is being made, the annual compensation to be paid by 125
each taxpayer subject to the agreement to its employees at the 126
project site, and the anticipated amount of income taxes to be 127
withheld from employee compensation pursuant to section 5747.06 128
of the Revised Code. 129

(2) The percentage of the exemption from the taxes imposed 130
under Chapters 5739. and 5741. of the Revised Code for the 131
computer data center equipment used or to be used at the 132
eligible computer data center, the length of time the computer 133
data center equipment will be exempted, and the first date on 134
which the exemption applies. 135

(3) A requirement that the computer data center remain an eligible computer data center during the term of the agreement and that the applicant maintain operations at the eligible computer data center during that term. An applicant does not violate the requirement described in division (E)(3) of this section if the applicant ceases operations at the eligible computer data center during the term of the agreement but resumes those operations within eighteen months after the date of cessation. The agreement shall provide that, in such a case, the applicant and any other taxpayer that operates a computer data center business at the project site shall not claim the tax exemption authorized in the agreement for any purchase of computer data center equipment made during the period in which the applicant did not maintain operations at the eligible computer data center.

(4) A requirement that, for each year of the term of the agreement beginning on or after the first day of the twenty-fifth month after the date the agreement was entered into, one or more taxpayers operating a computer data center business at the project site will, in the aggregate, pay annual compensation that is subject to the withholding obligation imposed under section 5747.06 of the Revised Code of at least one million five hundred thousand dollars to employees at the eligible computer data center.

(5) A requirement that each taxpayer subject to the agreement annually report to the director of development employment, tax withholding, capital investment, and other information required by the director to perform the director's duties under this section.

(6) A requirement that the director of development

annually review the annual reports of each taxpayer subject to 166
the agreement to verify the information reported under division 167
(E) (5) of this section and compliance with the agreement. Upon 168
verification, the director shall issue a certificate to each 169
such taxpayer stating that the information has been verified and 170
that the taxpayer remains eligible for the exemption specified 171
in the agreement. 172

(7) A provision providing that the taxpayers subject to 173
the agreement may not relocate a substantial number of 174
employment positions from elsewhere in this state to the project 175
site unless the director of development determines that the 176
appropriate taxpayer notified the legislative authority of the 177
county, township, or municipal corporation from which the 178
employment positions would be relocated. For purposes of this 179
paragraph, the movement of an employment position from one 180
political subdivision to another political subdivision shall be 181
considered a relocation of an employment position unless the 182
movement is confined to the project site. The transfer of an 183
employment position from one political subdivision to another 184
political subdivision shall not be considered a relocation of an 185
employment position if the employment position in the first 186
political subdivision is replaced by another employment 187
position. 188

(8) A waiver by each taxpayer subject to the agreement of 189
any limitations periods relating to assessments or adjustments 190
resulting from the taxpayer's failure to comply with the 191
agreement. 192

(F) The term of an agreement under this section shall be 193
determined by the tax credit authority, and the amount of the 194
exemption shall not exceed one hundred per cent of such taxes 195

that would otherwise be owed in respect to the exempted computer data center equipment. 196
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(G) If any taxpayer subject to an agreement under this section fails to meet or comply with any condition or requirement set forth in the agreement, the tax credit authority may amend the agreement to reduce the percentage of the exemption or term during which the exemption applies to the computer data center equipment used or to be used by the noncompliant taxpayer at an eligible computer data center. The reduction of the percentage or term may take effect in the current calendar year. 198
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(H) Financial statements and other information submitted to the department of development or the tax credit authority by an applicant for or recipient of an exemption under this section, and any information taken for any purpose from such statements or information, are not public records subject to section 149.43 of the Revised Code. However, the chairperson of the authority may make use of the statements and other information for purposes of issuing public reports or in connection with court proceedings concerning tax exemption agreements under this section. Upon the request of the tax commissioner, the chairperson of the authority shall provide to the tax commissioner any statement or other information submitted by an applicant for or recipient of an exemption under this section. The tax commissioner shall preserve the confidentiality of the statement or other information. 207
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(I) The tax commissioner shall issue a direct payment permit under section 5739.031 of the Revised Code to each taxpayer subject to an agreement under this section. Such direct payment permit shall authorize the taxpayer to pay any sales and 222
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use taxes due on purchases of computer data center equipment 226
used or to be used in an eligible computer data center and to 227
pay any sales and use taxes due on purchases of tangible 228
personal property or taxable services other than computer data 229
center equipment used or to be used in an eligible computer data 230
center directly to the tax commissioner. Each such taxpayer 231
shall pay pursuant to such direct payment permit all sales tax 232
levied on such purchases under sections 5739.02, 5739.021, 233
5739.023, and 5739.026 of the Revised Code and all use tax 234
levied on such purchases under sections 5741.02, 5741.021, 235
5741.022, and 5741.023 of the Revised Code, consistent with the 236
terms of the agreement entered into under this section. 237

During the term of an agreement under this section each 238
taxpayer subject to the agreement shall submit to the tax 239
commissioner a return that shows the amount of computer data 240
center equipment purchased for use at the eligible computer data 241
center, the amount of tangible personal property and taxable 242
services other than computer data center equipment purchased for 243
use at the eligible computer data center, the amount of tax 244
under Chapter 5739. or 5741. of the Revised Code that would be 245
due in the absence of the agreement under this section, the 246
exemption percentage for computer data center equipment 247
specified in the agreement, and the amount of tax due under 248
Chapter 5739. or 5741. of the Revised Code as a result of the 249
agreement under this section. Each such taxpayer shall pay the 250
tax shown on the return to be due in the manner and at the times 251
as may be further prescribed by the tax commissioner. Each such 252
taxpayer shall include a copy of the director of development's 253
certificate of verification issued under division (E) (6) of this 254
section. Failure to submit a copy of the certificate with the 255
return does not invalidate the claim for exemption if the 256

taxpayer submits a copy of the certificate to the tax 257
commissioner within the time prescribed by section 5703.0510 of 258
the Revised Code. 259

(J) If the director of development determines that one or 260
more taxpayers received an exemption from taxes due on the 261
purchase of computer data center equipment purchased for use at 262
a computer data center that no longer complies with the 263
requirement under division (E) (3) of this section, the director 264
shall notify the tax credit authority and, if applicable, the 265
taxpayer that applied to enter the agreement for the exemption 266
under division (C) of this section of the noncompliance. After 267
receiving such a notice, and after giving each taxpayer subject 268
to the agreement an opportunity to explain the noncompliance, 269
the authority may terminate the agreement and require each such 270
taxpayer to pay to the state all or a portion of the taxes that 271
would have been owed in regards to the exempt equipment in 272
previous years, all as determined under rules adopted pursuant 273
to division (K) of this section. In determining the portion of 274
the taxes that would have been owed on the previously exempted 275
equipment to be paid to this state by a taxpayer, the authority 276
shall consider the effect of market conditions on the eligible 277
computer data center, whether the taxpayer continues to maintain 278
other operations in this state, and, with respect to agreements 279
involving multiple taxpayers, the taxpayer's level of 280
responsibility for the noncompliance. After making the 281
determination, the authority shall certify to the tax 282
commissioner the amount to be paid by each taxpayer subject to 283
the agreement. The tax commissioner shall make an assessment for 284
that amount against each such taxpayer under Chapter 5739. or 285
5741. of the Revised Code. The time limitations on assessments 286
under those chapters do not apply to an assessment under this 287

division, but the tax commissioner shall make the assessment 288
within one year after the date the authority certifies to the 289
tax commissioner the amount to be paid by the taxpayer. 290

(K) The director of development, after consultation with 291
the tax commissioner and in accordance with Chapter 119. of the 292
Revised Code, shall adopt rules necessary to implement this 293
section. The rules may provide for recipients of tax exemptions 294
under this section to be charged fees to cover administrative 295
costs incurred in the administration of this section. The fees 296
collected shall be credited to the tax incentives operating fund 297
created in section 122.174 of the Revised Code. At the time the 298
director gives public notice under division (A) of section 299
119.03 of the Revised Code of the adoption of the rules, the 300
director shall submit copies of the proposed rules to the 301
chairpersons of the standing committees on economic development 302
in the senate and the house of representatives. 303

(L) On or before the first day of August of each year, the 304
director of development shall submit a report to the governor, 305
the president of the senate, and the speaker of the house of 306
representatives on the tax exemption authorized under this 307
section. The report shall include information on the number of 308
agreements that were entered into under this section during the 309
preceding calendar year, a description of the eligible computer 310
data center that is the subject of each such agreement, and an 311
update on the status of eligible computer data centers under 312
agreements entered into before the preceding calendar year. 313

(M) A taxpayer may be made a party to an existing 314
agreement entered into under this section by the tax credit 315
authority and another taxpayer or group of taxpayers. In such a 316
case, the taxpayer shall be entitled to all benefits and bound 317

by all obligations contained in the agreement and all 318
requirements described in this section. When an agreement 319
includes multiple taxpayers, each taxpayer shall be entitled to 320
a direct payment permit as authorized in division (I) of this 321
section. 322

Section 2. That existing section 122.175 of the Revised 323
Code is hereby repealed. 324