

REFERENCE TITLE: **commerce authority; data centers**

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1366

Introduced by
Senator Mesnard

AN ACT

AMENDING SECTION 41-1519 AND 42-5071, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA COMMERCE AUTHORITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1519, Arizona Revised Statutes, is amended to
3 read:

4 41-1519. Computer data center tax relief; definitions

5 A. ~~From and after August 31, 2013,~~ Tax relief is allowed for the
6 owner or operator of a computer data center certified pursuant to this
7 section. The same tax relief is allowed for qualified colocation tenants
8 of the computer data center. All tax relief applies during the
9 qualification period.

10 B. To qualify for the tax relief, the owner or operator shall
11 submit to the authority an application on a form prescribed by the
12 authority that includes all of the following:

13 1. The owner's or operator's name, address and telephone number.

14 2. The address of the site where the facility is or will be
15 located, including, if applicable, information sufficient to identify the
16 specific portion or portions of the facility composing the computer data
17 center.

18 3. If the computer data center is to qualify under subsection E,
19 paragraph 1 of this section, both of the following:

20 (a) The anticipated investment associated with the computer data
21 center for which the tax relief is being sought and whether the computer
22 data center is anticipated to qualify as a sustainable redevelopment
23 project.

24 (b) An affirmation, signed by an authorized executive representing
25 the owner or operator, that the computer data center is expected to
26 satisfy one of the certification requirements prescribed in subsection E,
27 paragraph 1 of this section and that the computer data center will not
28 violate subsection M of this section.

29 4. If the computer data center is to qualify under subsection E,
30 paragraph 2 of this section, an affirmation, signed by an authorized
31 executive representing the owner or operator, that the computer data
32 center has satisfied the certification requirements prescribed in
33 subsection E, paragraph 2 of this section, whether the computer data
34 center qualifies as a sustainable redevelopment project and that the
35 computer data center will not violate subsection M of this section.

36 C. Within sixty days after receiving a complete and correct
37 application, the authority shall review the application and either issue a
38 written certification that the computer data center qualifies for the tax
39 relief or provide written reasons for its denial. Failure to approve or
40 deny the application within sixty days after the date the owner or
41 operator submits the application to the authority constitutes approval of
42 the computer data center, and the authority shall issue written
43 certification to the owner or operator within fourteen days. The
44 effective date of the certification is the date on which the application
45 was submitted to the authority. The authority shall send a copy of the

1 certification, including its effective date, to the department of
2 revenue. The authority shall not certify any new computer data center
3 after December 31, 2023.

4 D. An owner or operator may separate a facility into one or more
5 computer data centers, which may each receive a separate certification if
6 each computer data center individually meets the requirements prescribed
7 in subsection E of this section. A portion of a facility or an article of
8 computer data center equipment shall not be deemed to be a part of more
9 than one computer data center. The owner or operator may aggregate one or
10 more of the parcels, buildings, condominiums or modular data centers in a
11 facility into a single computer data center if, in the aggregate, the
12 parcels, buildings, condominiums and modular data centers meet the
13 requirements of subsection E of this section.

14 E. A computer data center must meet one of the following
15 requirements after taking into account the combined investments made by
16 the owner, operator or qualified colocation tenants of a computer data
17 center:

18 1. On or before the fifth anniversary of certification, the
19 computer data center creates a minimum investment of at least:

20 (a) ~~Twenty-five million dollars~~ \$25,000,000 of new investment,
21 including costs of land, buildings, improvements, modular data centers and
22 computer data center equipment, whether owned or leased or paid for
23 pursuant to a right to use agreement, if the computer data center is
24 located in a county with a population of eight hundred thousand or less
25 persons.

26 (b) ~~Fifty million dollars~~ \$50,000,000 of new investment, including
27 costs of land, buildings, improvements, modular data centers and computer
28 data center equipment, whether owned or leased or paid for pursuant to a
29 right to use agreement, if the computer data center is located in a county
30 with a population of more than eight hundred thousand persons.

31 2. During the seventy-two months immediately before September 1,
32 2013, the computer data center created an investment of at least ~~two~~
33 ~~hundred fifty million dollars~~ \$250,000,000, including costs of land,
34 buildings, improvements, modular data centers and computer data center
35 equipment, whether owned or leased or paid for pursuant to a right to use
36 agreement.

37 F. On or before the fifth anniversary of the certification of a new
38 computer data center, the owner or operator shall notify the authority in
39 writing that the computer data center for which the certification is
40 requested has or has not satisfied the requirements prescribed in
41 subsection E, paragraph 1 of this section. Until a new computer data
42 center satisfies the requirements prescribed in subsection E, paragraph 1
43 of this section, the owner or operator shall keep detailed records of all
44 investment created by the new computer data center, including costs of
45 land, buildings, improvements, modular data centers and computer data

1 center equipment, and all tax relief directly received by the owner or
2 operator. This subsection does not apply to an existing computer data
3 center.

4 G. If the authority determines that:

5 1. A new computer data center that is certified under subsection E,
6 paragraph 1 of this section has not complied with the requirements and
7 time periods prescribed by subsection E, paragraph 1 of this section, the
8 authority shall revoke the computer data center's certification. If the
9 certification is revoked, the qualification period of any owner, operator
10 or qualified colocation tenant of the computer data center automatically
11 terminates, and the department of revenue may recapture all or part of the
12 tax relief provided directly to the owners and operators. A qualified
13 colocation tenant is not subject to recapture of any part of tax relief
14 received pursuant to this section, except that a contributing qualified
15 colocation tenant may be subject to recapture if ~~they are~~ IT IS located in
16 a computer data center that is certified from and after August 31, 2016.
17 An owner or operator may appeal any revocation under this paragraph
18 pursuant to chapter 6, article 10 of this title.

19 2. There has been a violation of subsection M of this section with
20 respect to a computer data center:

21 (a) The authority shall revoke the computer data center's
22 certification and, if revoked, the qualification period of any owner,
23 operator or qualified colocation tenant of the computer data center
24 automatically terminates.

25 (b) The department of revenue may not recapture any tax relief
26 provided directly to the owner, operator or qualified colocation tenant
27 before the date of revocation.

28 (c) An owner or operator may appeal any revocation under this
29 paragraph pursuant to chapter 6, article 10 of this title.

30 H. The authority and the department of revenue shall adopt rules
31 and prescribe forms and procedures as necessary for the purposes of this
32 section. The authority and the department shall collaborate in adopting
33 rules as necessary to avoid duplication and inconsistencies while
34 accomplishing the purposes of this section. The authority has exclusive
35 authority over issues related to certification, including determinations
36 as to whether a computer data center has satisfied the requirements of
37 subsection E of this section, constitutes a qualified sustainable
38 redevelopment project or has committed a violation of this section. The
39 department of revenue has exclusive authority over the administration of
40 tax relief.

41 I. Proprietary business information contained in the application
42 described in subsection B of this section, the written notice described in
43 subsection F of this section and the list described in subsection J of
44 this section are confidential and shall not be disclosed to the public
45 except that the information shall be transmitted to the department of

1 revenue. The authority or the department may disclose the name of a
2 computer data center that has been certified pursuant to this section.

3 J. The owner or operator shall provide the authority and the
4 department of revenue with a list of qualified colocation tenants,
5 including the commencement and expiration dates of each qualified
6 colocation tenant's agreement to use or occupy all or part of the computer
7 data center, and shall notify the authority and the department of any
8 changes within thirty days. The failure of an owner or operator to
9 provide the list or notify the authority and department of revenue of
10 changes within the required time are not grounds for termination of the
11 computer data center's certification, but may preclude unlisted colocation
12 tenants from receiving tax relief until the list is provided or updated.

13 K. Except as provided in subsection G of this section, if a
14 computer data center has been certified, the certification remains in
15 effect, even in the event of a future transfer, sale or disposition,
16 directly or indirectly, of the computer data center.

17 L. For the purposes of qualifying and continuing as a sustainable
18 redevelopment project:

19 1. After receiving certification, an owner may substantially
20 demolish all or part of an existing building to the extent reasonably
21 necessary to accommodate future computer data center use, and the
22 demolition is not cause for loss of certification as a sustainable
23 redevelopment project. An existing building that has been substantially
24 demolished before certification is not eligible to qualify as a
25 sustainable redevelopment project.

26 2. An owner or operator may expand the boundaries of a certified
27 computer data center by increasing the size of an existing building within
28 a sustainable redevelopment project or by building additional improvements
29 in an unlimited manner to the extent the expansion is constructed on the
30 same parcel of land on which the original sustainable redevelopment
31 project is located or on a contiguous parcel, regardless of whether the
32 contiguous parcel was within the original description of the boundaries of
33 the certified computer data center. Expansion activities do not prevent a
34 facility from maintaining its classification as a sustainable
35 redevelopment project.

36 3. All construction activities and investments related to
37 demolition and expansion activities described in this subsection are
38 considered to be a part of the sustainable redevelopment project.

39 M. This section does not allow a computer data center to do either
40 of the following:

- 41 1. Generate electricity for resale purposes.
- 42 2. Generate, provide or sell electricity outside of the computer
43 data center.

44 N. The owner or operator may be a single individual or entity or
45 multiple affiliated entities.

1 0. For the purposes of this section:

2 1. "Computer data center" means all or part of a facility that may
3 be composed of multiple businesses or owners, that is or will be
4 predominantly used to house working servers and that may have
5 uninterruptible energy supply or generator backup power, or both, cooling
6 systems, towers and other temperature control infrastructure.

7 2. "Computer data center equipment" means equipment **OR PROPERTY**
8 that is used to outfit, operate or benefit a computer data center and
9 component parts, installations, refreshments, replacements and upgrades to
10 this equipment **OR PROPERTY**, regardless of whether affixed to or
11 incorporated into real property, and whether owned, leased, **LICENSED** or
12 used by the owner or operator pursuant to a contract for the right to use
13 the equipment **OR PROPERTY**, including:

14 (a) All equipment necessary for the transformation, generation,
15 distribution or management of electricity that is required to operate
16 computer server equipment, including generators, uninterruptible energy,
17 supplies, conduit, gaseous fuel piping, cabling, duct banks, switches,
18 switchboards, batteries and testing equipment.

19 (b) All equipment necessary to cool and maintain a controlled
20 environment for the operation of the computer server and other components
21 of the computer data center, including mechanical equipment, refrigerant
22 piping, gaseous fuel piping, adiabatic and free cooling systems, cooling
23 towers, water softeners, air handling units, indoor direct exchange units,
24 fans, ducting and filters.

25 (c) All water conservation systems, including facilities or
26 mechanisms that are designed to collect, conserve and reuse water.

27 (d) All **enabling** software, **SOFTWARE MAINTENANCE, SOFTWARE SUPPORT,**
28 computer server equipment, chassis, networking equipment, switches, racks,
29 cabling, trays and conduit.

30 (e) All monitoring equipment and security systems.

31 (f) Modular data centers and preassembled components of any item
32 described in this paragraph, including components used in the
33 manufacturing of modular data centers.

34 (g) Other tangible personal property that is essential to the
35 operations of a computer data center.

36 3. "Contributing qualified colocation tenant" means a qualified
37 colocation tenant that is an operator or that had its anticipated
38 investment included in an application for certification for the purposes
39 of satisfying subsection E, paragraph 1 of this section.

40 4. "Existing building" means any existing vertical building
41 improvement located at a facility used for commercial purposes at the time
42 of its acquisition by an owner, but not including single family
43 residential structures, barns or other agricultural structures.

44 5. "Existing computer data center" means a computer data center
45 that is certified under subsection E, paragraph 2 of this section.

1 6. "Facility" means one or more parcels of land in this state and
2 any structures and personal property contained on the land.

3 7. "Investment" means all monies spent to acquire a facility
4 regardless of prior use and all monies spent to construct or expand a
5 computer data center, including costs of land, buildings, improvements,
6 modular data centers and computer data center equipment. For new data
7 centers, investment includes all costs incurred on or after a date that is
8 thirty days before the date the application is submitted to the authority.

9 8. "Modular data center" means a portable system of information
10 technology, climate control, energy supply and energy distribution
11 machinery, equipment and related tangible personal property contained in
12 an intermodal freight container or similar structure.

13 9. "New computer data center" means a computer data center that is
14 certified under subsection E, paragraph 1 of this section.

15 10. "Operator" means any individual or entity that operates a
16 computer data center as an operator or lessor or pursuant to a contract
17 with an owner or lessor. Operator includes a licensed property management
18 company, a property lessor or any other individual or entity responsible
19 for the control, oversight or maintenance of a facility.

20 11. "Qualification period" means:

21 (a) With respect to the owner or operator of a computer data
22 center, a period of time beginning on the effective date of the computer
23 data center's certification and expiring at the end of the tenth full
24 calendar year following the calendar year containing the effective date,
25 except, if a computer data center is a sustainable redevelopment project,
26 qualification period means a period of time beginning on the effective
27 date of the computer data center's certification and expiring at the end
28 of the twentieth full calendar year following the calendar year containing
29 the effective date.

30 (b) With respect to the qualified colocation tenant of the owner or
31 operator of a computer data center certified under this section, a period
32 of time beginning on the date that the qualified colocation tenant enters
33 into an agreement concerning the use or occupancy of the computer data
34 center and expiring at the earlier of the expiration of the term of the
35 agreement or the tenth full calendar year following the calendar year in
36 which the qualified colocation tenant entered into the agreement, except,
37 if a computer data center is a sustainable redevelopment project,
38 qualification period means a period of time beginning on the date that the
39 qualified colocation tenant enters into an agreement concerning the use or
40 occupancy of the computer data center and expiring at the earlier of the
41 expiration of the term of the agreement or the twentieth full calendar
42 year following the calendar year in which the tenant entered into the
43 agreement. The qualification period for a qualified colocation tenant may
44 not extend beyond the qualification period for the owner or operator of
45 the computer data center.

1 12. "Qualified colocation tenant" means an entity that contracts
2 with the owner, THE operator or another qualified colocation tenant of a
3 computer data center, that is certified pursuant to this section to use or
4 occupy all or part of the computer data center for at least five hundred
5 kilowatts per month for a period of two or more years.

6 13. "Sustainable redevelopment project" means a computer data
7 center that satisfies the requirements in subsection E of this section and
8 is either:

9 (a) A newly constructed data center, with at least a ~~two hundred~~
10 ~~million dollar~~ \$200,000,000 investment, that attains certification under
11 the energy star or green globes standard, the leadership in energy and
12 environmental design green building rating standard developed by the
13 United States green building council or an equivalent green building
14 standard and was not previously certified under these standards.

15 (b) A data center that occupies an existing facility that either:

16 (i) Was at least fifty percent vacant for six of the twelve
17 consecutive months before the acquisition by purchase or lease of or with
18 respect to the facility.

19 (ii) Attains certification under the energy star or green globes
20 standard, the leadership in energy and environmental design green building
21 rating standard developed by the United States green building council or
22 an equivalent green building standard and was not previously certified
23 under these standards.

24 14. "Tax relief" means the deduction of the gross proceeds of sale
25 or gross income from the sale, USE OR RENTAL of qualified equipment as
26 prescribed by section 42-5061, 42-5071, 42-5159 or 42-6004 that is
27 installed in a computer data center.

28 Sec. 2. Section 42-5071, Arizona Revised Statutes, is amended to
29 read:

30 42-5071. Personal property rental classification; definitions

31 A. The personal property rental classification is comprised of the
32 business of leasing or renting tangible personal property for a
33 consideration. The tax does not apply to:

34 1. Leasing or renting films, tapes or slides used by theaters or
35 movies, which are engaged in business under the amusement classification,
36 or used by television stations or radio stations.

37 2. Activities engaged in by the Arizona exposition and state fair
38 board or county fair commissions in connection with events sponsored by
39 such entities.

40 3. Leasing or renting tangible personal property by a parent
41 corporation to a subsidiary corporation or by a subsidiary corporation to
42 another subsidiary of the same parent corporation if taxes were paid under
43 this chapter on the gross proceeds or gross income accruing from the
44 initial sale of the tangible personal property. For the purposes of this

1 paragraph, "subsidiary" means a corporation of which at least eighty
2 percent of the voting shares are owned by the parent corporation.

3 4. Operating coin-operated washing, drying and dry cleaning
4 machines or coin-operated car washing machines at establishments for the
5 use of such machines.

6 5. Leasing or renting tangible personal property for incorporation
7 into or comprising any part of a qualified environmental technology
8 facility as described in section 41-1514.02. This paragraph shall apply
9 for ten full consecutive calendar or fiscal years following the initial
10 lease or rental by each qualified environmental technology manufacturer,
11 producer or processor.

12 6. Leasing or renting aircraft, flight simulators or similar
13 training equipment to students or staff by nonprofit, accredited
14 educational institutions that offer associate or baccalaureate degrees in
15 aviation or aerospace related fields.

16 7. Leasing or renting photographs, transparencies or other creative
17 works used by this state on internet websites, in magazines or in other
18 publications that encourage tourism.

19 8. Leasing or renting certified ignition interlock devices
20 installed pursuant to the requirements prescribed by section 28-1461. For
21 the purposes of this paragraph, "certified ignition interlock device" has
22 the same meaning prescribed in section 28-1301.

23 9. The leasing or renting of space to make attachments to utility
24 poles, as follows:

25 (a) By a person that is engaged in business under section 42-5063
26 or 42-5064 or that is a cable operator.

27 (b) To a person that is engaged in business under section 42-5063
28 or 42-5064 or that is a cable operator.

29 10. Leasing or renting billboards that are designed, intended or
30 used to advertise or inform and that are visible from any street, road or
31 other highway.

32 B. The tax base for the personal property rental classification is
33 the gross proceeds of sales or gross income derived from the business, but
34 the gross proceeds of sales or gross income derived from the following
35 shall be deducted from the tax base:

36 1. Reimbursements by the lessee to the lessor of a motor vehicle
37 for payments by the lessor of the applicable fees and taxes imposed by
38 sections 28-2003, 28-2352, 28-2402, 28-2481 and 28-5801, title 28, chapter
39 15, article 2 and article IX, section 11, Constitution of Arizona, to the
40 extent such amounts are separately identified as such fees and taxes and
41 are billed to the lessee.

1 2. Leases or rentals of tangible personal property that, if it had
2 been purchased instead of leased or rented by the lessee, would have been
3 exempt under:

4 (a) Section 42-5061, subsection A, paragraph 8, 9, 12, 13, 25, 29,
5 49 or 53.

6 (b) Section 42-5061, subsection B, except that a lease or rental of
7 new machinery or equipment is not exempt pursuant to section 42-5061,
8 subsection B, paragraph 13 if the lease is for less than two years.

9 (c) Section 42-5061, subsection I, paragraph 1.

10 (d) Section 42-5061, subsection M.

11 3. Motor vehicle fuel and use fuel that are subject to a tax
12 imposed under title 28, chapter 16, article 1, sales of use fuel to a
13 holder of a valid single trip use fuel tax permit issued under section
14 28-5739 and sales of aviation fuel that are subject to the tax imposed
15 under section 28-8344.

16 4. Leasing or renting a motor vehicle subject to and on which the
17 fee has been paid under title 28, chapter 16, article 4.

18 5. Amounts received by a motor vehicle dealer for the first month
19 of a lease payment if the lease and the lease payment for the first month
20 of the lease are transferred to a third-party leasing company.

21 6. COMPUTER DATA CENTER EQUIPMENT LEASED OR RENTED TO THE OWNER,
22 OPERATOR OR QUALIFIED COLOCATION TENANT OF A COMPUTER DATA CENTER THAT IS
23 CERTIFIED BY THE ARIZONA COMMERCE AUTHORITY PURSUANT TO SECTION 41-1519 OR
24 AN AUTHORIZED AGENT OF THE OWNER, OPERATOR OR QUALIFIED COLOCATION TENANT
25 DURING THE QUALIFICATION PERIOD FOR USE IN THE QUALIFIED COMPUTER DATA
26 CENTER. FOR THE PURPOSES OF THIS PARAGRAPH, "COMPUTER DATA CENTER",
27 "COMPUTER DATA CENTER EQUIPMENT", "QUALIFICATION PERIOD" AND "QUALIFIED
28 COLOCATION TENANT" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 41-1519.

29 C. Sales of tangible personal property to be leased or rented to a
30 person engaged in a business classified under the personal property rental
31 classification are deemed to be resale sales.

32 D. In computing the tax base, the gross proceeds of sales or gross
33 income from the lease or rental of a motor vehicle does not include any
34 amount attributable to the car rental surcharge under section 5-839,
35 28-5810 or 48-4234.

36 E. Until December 31, 1988, leasing or renting animals for
37 recreational purposes is exempt from the tax imposed by this section.
38 Beginning January 1, 1989, the gross proceeds or gross income from leasing
39 or renting animals for recreational purposes is subject to taxation under
40 this section. Tax liabilities, penalties and interest paid for taxable
41 periods before January 1, 1989 shall not be refunded unless the taxpayer
42 requesting the refund provides proof satisfactory to the department that
43 the monies paid as taxes will be returned to the customer.

1 F. For the purposes of this section:

2 1. "Cable operator" has the same meaning prescribed ~~by~~ IN section
3 9-505.

4 2. "Utility pole" means any wooden, metal or other pole used for
5 utility purposes and the pole's appurtenances that are attached or
6 authorized for attachment by the person controlling the pole.

7 Sec. 3. Retroactivity

8 This act applies retroactively to from and after September 12, 2013.