

REFERENCE TITLE: **commerce authority; data center equipment**

State of Arizona
Senate
Fifty-fourth Legislature
Second Regular Session
2020

SB 1124

Introduced by
Senator Mesnard

AN ACT

AMENDING SECTION 41-1519, 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 revenue.
2 The authority shall not certify any new computer data center after
3 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 that is used to
8 outfit, operate or benefit a computer data center and component parts,
9 installations, refreshments, replacements and upgrades to this equipment,
10 regardless of whether affixed to or incorporated into real property, and
11 whether owned, leased, LICENSED or used by the owner or operator pursuant
12 to a contract for the right to use the equipment, including:

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

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

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

26 (d) All enabling software, computer server equipment, chassis,
27 networking equipment, switches, racks, cabling, trays and conduit.

28 (e) All monitoring equipment and security systems.

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

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

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

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

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

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

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

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

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

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

18 11. "Qualification period" means:

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

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

8 ~~13.~~ 14. "Sustainable redevelopment project" means a computer data
9 center that satisfies the requirements in subsection E of this section and
10 is either:

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

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

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

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

26 ~~14.~~ 15. "Tax relief" means the deduction of the gross proceeds of
27 sale or gross income from the sale, USE of qualified equipment as
28 prescribed by section 42-5061, 42-5159 or 42-6004 that is installed in a
29 computer data center.

30 Sec. 2. Legislative intent

31 The legislature intends this act as clarifying legislation in
32 support of the broad-based transaction privilege and use tax exemption for
33 computer data center equipment.

34 Sec. 3. Retroactivity; refunds

35 A. This act applies retroactively to from and after September 12,
36 2013.

37 B. Any claim for a refund of transaction privilege or use tax based
38 on the retroactive application of section 41-1519, subsection 0, paragraph
39 2, subdivision (d), Arizona Revised Statutes, as amended by this act, and
40 section 41-1519, subsection 0, paragraph 13, Arizona Revised Statutes, as
41 added by this act, shall be submitted to the department of revenue on or
42 before December 31, 2020, pursuant to section 42-1118, Arizona Revised
43 Statutes. In addition:

44 1. A failure to file a claim on or before December 31, 2020
45 constitutes a waiver of the claim for refund.

1 2. The aggregate amount of refunds may not exceed \$10,000 for
2 claims filed from January 1, 2020 through December 31, 2020.

3 3. If the aggregate amount of claims ultimately determined to be
4 correct exceeds \$10,000, the department of revenue shall reduce each claim
5 proportionately so that the total refund amount equals \$10,000.

6 4. Interest is not allowed or compounded on any refundable amount
7 of claims if paid before July 1, 2020, but if the amount cannot be
8 determined or paid until after June 30, 2020, interest accrues after that
9 date under section 42-1123, Arizona Revised Statutes.

10 5. A refund claim that is filed before January 1, 2020 or that is
11 not connected to the amendments under this act is not subject to the
12 \$10,000 aggregate refund amount.

13 Sec. 4. Severability

14 If a provision of this act or its application to any person or
15 circumstance is held invalid, the invalidity does not affect other
16 provisions or application of this act that can be given effect without the
17 invalid provision or application, and to this end the provisions of this
18 act are severable.