

# Fiscal Note

**BILL #** SB 1398

**TITLE:** TPT deductions; computer data centers

**SPONSOR:** Livingston

**STATUS:** As Introduced

**PREPARED BY:** Hans Olofsson

## Description

SB 1398, as introduced, would provide a Transaction Privilege Tax (TPT) exemption under the prime contracting classification for the installation of computer data center equipment at data centers certified by the Arizona Commerce Authority (ACA).

## Estimated Impact

The bill would result in one-time revenue loss of up to \$(10,000) in FY 2022 for tax refunds. With one exception, we are uncertain whether data centers have paid the prime contracting tax in the past. If they have not paid the contracting tax, the bill would not have an ongoing impact. The Department of Revenue (DOR), however, has recently opined that there is at least one instance where the prime contracting tax was required to be paid. If that decision were more broadly applied by DOR, the bill would result in foregone revenue. Due to a lack of industry-specific data on the cost of installing data center equipment, we cannot determine this potential magnitude.

Besides our own staff research, we also contacted DOR as well as the League of Arizona Cities and Towns and a representative of the data center industry, but they were not able to provide any information that would allow us to quantify the bill's fiscal impact.

## Analysis

Under current law, equipment that is purchased and installed at a certified computer data center in Arizona is exempt from retail TPT and Use Tax. This bill would exempt the installation, assembly, repair or maintenance of such equipment from prime contracting TPT if it has "independent functional utility." (Independent functional utility means that the equipment "can independently perform its function without attachment to real property" such as land or a building.)

According to an industry representative, since the inception of ACA's computer data center program in 2013, certified data centers have interpreted existing statute [A.R.S. § 41-1519(O)(14)] to mean that equipment that is exempt from retail TPT and Use Tax is also exempt from prime contracting tax when installed at the data center. According to the same industry representative, this is the reason that certified data centers did not pay prime contracting TPT on the cost of installing equipment until late in 2019 when a contractor informed one of the data centers that their contract for installation was subject to prime contracting TPT.

While we were unable to determine whether prime contracting tax was paid on the installation of the equipment at that data center, we contacted DOR and they confirmed that they were familiar with this case. Moreover, DOR also informed us that they have opined that under their interpretation of statutes, this particular contract was not exempt from prime contracting TPT.

Based on the information above, which we cannot independently confirm, the bill could result in a one-time General Fund revenue loss of up to \$(10,000) in FY 2022 (the maximum statewide aggregate refund amount under SB 1398). The ongoing revenue impact depends on whether the bill is compared to current law or current practice. Relative to current law, the bill would result in a revenue loss since equipment that is installed at data centers would be exempt from prime contracting TPT. Relative to current practice, however, the bill would have no ongoing revenue impact since no certified data center in Arizona (with the possible exception for the one mentioned above) has paid the prime contracting tax in the past.

(Continued)

**JLBC**

As noted above, the JLBC Staff cannot independently verify the information provided by the industry representative. Moreover, due to a lack of specific data on the cost of installing data center equipment, we cannot quantify the bill's fiscal impact at the current time.

**Local Government Impact**

Under the statutory distribution formula, a certain percentage (based on TPT classification) of state TPT is shared with incorporated cities and towns as well as counties. Therefore, insofar as this bill reduces state TPT, it would also result in reduced revenue distributions to municipalities and counties.

2/11/21