

House Bill 487

By: Representatives Parsons of the 44th, Fludd of the 64th, Harbin of the 122nd, Burns of the 159th, Kirby of the 114th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales
2 and use taxes, so as to provide for the comprehensive revision of sales and use tax provisions
3 for all entities participating in the data center industry; to change and provide for definitions;
4 to change and provide for exemptions; to provide for legislative intent; to provide for related
5 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 The General Assembly finds that, in order to promote investment in Georgia's data center
9 infrastructure, the electricity and certain data center equipment purchased to provide data
10 center services should be exempt from state sales tax.

11 **SECTION 2.**

12 Chapter 8 of Title 48 of the Official Code of Georgia Annotated, relating to sales and use
13 taxes, is amended by revising Code Section 48-8-2, relating to definitions regarding sales and
14 use taxes, by adding new paragraphs to read as follows:

15 "(7.1) 'Data center operations' means facility infrastructure services necessary to power,
16 cool, and operate information technology equipment, including telecommunications
17 infrastructure necessary to permit and facilitate the transmission of data and
18 communications from the data center tenant's assigned space within an Internet data
19 center to either external telecommunications lines or directly to other data center tenants
20 in the same Internet data center.

21 (7.2) 'Data center operator' means a person or entity that controls access to an Internet
22 data center, regardless of whether that person owns each item of tangible personal
23 property located at such Internet data center. A data center operator may also be a data
24 center owner.

25 (7.3) 'Data center owner' means a person or entity that owns the building in which the
 26 an Internet data center is located. A data center owner may also be a data center operator.

27 (7.4) 'Data center service' means providing data center tenants access to high-grade,
 28 high-capacity Internet telecommunications to transmit data to and from tenant servers
 29 located in the Internet data center.

30 (7.5) 'Data center tenant' means a person or entity that contracts with either a data center
 31 owner or data center operator to place, or cause to be placed, tangible personal property
 32 at the Internet data center for use by the data center tenant. The data center tenant may
 33 also be a data center owner or data center operator. There may be multiple data center
 34 tenants at an Internet data center."

35 SECTION 3.

36 Said chapter is further amended by revising Code Section 48-8-3, relating to exemptions
 37 from sales and use taxes, by striking "or" at the end of paragraph (94), by striking the period
 38 and inserting a semicolon at the end of paragraph (95), and by adding new paragraphs to read
 39 as follows:

40 "(96)(A) The sale, use, storage, or consumption of eligible business property and
 41 electricity which is necessary and integral to an Internet data center in this state shall
 42 be exempt from all sales and use taxation. The electricity exemption shall not apply to
 43 sales and use taxes for educational purposes and shall be implemented over four years,
 44 with 25 percent being phased in each year beginning on January 1, 2016, and reaching
 45 100 percent on January 1, 2019.

46 (B) As used in this paragraph, the term:

47 (i) 'Eligible business property' means business property located and used at an
 48 Internet data center and used for:

49 (I) The provision of a service included in the business of the data center owner, data
 50 center operator, or data center tenant of the Internet data center, including, but not
 51 limited to, cooling systems for managing the performance of the property;

52 (II) The generation, transformation, transmission, distribution, or management of
 53 electricity, including exterior substations and other business personal property used
 54 for these purposes; and

55 (III) Nonservice property used by data center tenants in the operation of the Internet
 56 data center.

57 (ii) 'Internet data center' means a data center facility that:

58 (I) Is used primarily or is to be used primarily by a business engaged in software
 59 publishing included in 2007 North American Industrial Classification Systems

60 code 518210 or an Internet activity included in 2007 North American Industrial
61 Classification Systems codes 519130 and 531120;

62 (II) Is composed of a structure or series of structures located or to be located on a
63 single parcel of land or on contiguous parcels of land that are commonly owned by,
64 or owned by affiliation, with the operator of that facility in this state; and

65 (III) Has an approved application for certification of the Internet data center from
66 the commissioner that a minimum of \$50 million in private funds has been or will
67 be invested in real property or eligible business property, or a combination of both,
68 at the facility within a four-year period, pursuant to subparagraph (D) of this
69 paragraph, after the commencement of construction or refurbishing of the facility
70 and five permanent, full-time jobs by a data center operator and data center tenants,
71 collectively, associated with the operation or maintenance of the Internet data center
72 paying 150 percent of the average county wage rate for the area. A permanent,
73 full-time job means an employment position that will provide at least 1,820 hours
74 of employment per year to a single employee and not be created to replace a job
75 previously held by another employee. The average wage requirement shall be based
76 on the most recently available annual issue of the Georgia Employment and Wages
77 Averages Report of the Department of Labor.

78 (C) During the certification process, an Internet data center must agree to invest in real
79 property or eligible business property, or a combination of both, within a four-year
80 period, pursuant to subparagraph (D) of this paragraph, of:

81 (i) Up to \$150,000,000.00 investment to receive a 100 percent exemption of sales and
82 use tax paid on eligible business property;

83 (ii) Between \$150,000,000.00 and \$350,000,000.00 investment to receive a
84 75 percent exemption of sales and use tax paid on eligible business property; and

85 (iii) Equal to or greater than \$350,000,000.01 investment to receive a 50 percent
86 exemption of sales and use tax paid on eligible business property.

87 (D) An Internet data center may account for its investment in real property or eligible
88 business property, or a combination of both, in order to meet certification within a
89 four-year period measured as one year prior to the date of certification and three years
90 after the date of certification.

91 (E) An Internet data center that qualifies for the electricity exemption shall notify and
92 provide proof of certification to the person or entity making the qualified sale that such
93 exemption is applicable to the sale.

94 (F) An Internet data center submitting an application for certification shall commit to
95 make a minimum investment of at least \$50 million in private funds in real property or
96 eligible business property, or a combination of both, within a four-year period, pursuant

97 to subparagraph (D) of this paragraph, after commencement of construction or
 98 refurbishing of the facility and create 25 permanent, full-time jobs by a data center
 99 operator and data center tenants, collectively, paying 150 percent of the average county
 100 wage rate for the area. Failure to meet the certification requirements shall result in
 101 termination of the Internet data center's certification. Each Internet data center that
 102 defaults shall be liable for sales and use taxes, including penalty and interest from the
 103 date of purchase, on all tax-free purchases under this paragraph.

104 (G) This paragraph shall stand repealed by operation of law on January 1, 2026; or
 105 (97) The sale of equipment used in the business of providing data center operations at
 106 an Internet data center as defined in division (ii) of subparagraph (B) of paragraph (96)
 107 of this Code section. For purposes of this paragraph, the term 'equipment used in the
 108 business of providing data center operations' means all equipment, machinery, software,
 109 or other infrastructure that is used in whole or in part in processing, storing, retrieving,
 110 or communicating data as part of data center services provided to data center tenants.
 111 Such term includes, but is not limited to, servers, routers, connections, and other enabling
 112 hardware, including chillers and backup generators used or to be used in the operation of
 113 such equipment; property purchased or leased in connection with the original
 114 establishment, expansion, or operation of the Internet data center and any such property
 115 purchased or leased to upgrade, supplement, or replace equipment used in the business
 116 of providing data center operations purchased or leased in the initial investment. This
 117 provision shall not apply to general building improvements, fixtures, and general and
 118 administrative equipment not effectively connected or necessary to data center
 119 operations. Proof of certification shall be provided to the retailer when purchasing
 120 equipment used in the business of providing data center operations. This paragraph shall
 121 stand repealed by operation of law on January 1, 2026."

122 **SECTION 3.**

123 This Act shall become effective on January 1, 2016.

124 **SECTION 4.**

125 All laws and parts of laws in conflict with this Act are repealed.