

FIRST REGULAR SESSION

HOUSE BILL NO. 366

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES SILVEY (Sponsor), TALBOY, ZERR, FISHER, NETH,
KELLY (24), SIFTON AND WEBBER (Co-sponsors).

1090L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 144, RSMo, by adding thereto one new section relating to tax incentives for data storage and server farm facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 144, RSMo, is amended by adding thereto one new section, to be
2 known as section 144.810, to read as follows:

**144.810. 1. As used in this section, unless the context clearly indicates otherwise,
2 the following terms shall mean:**

3 (1) "Commencement of commercial operations", shall be deemed to occur during
4 the first calendar year for which the data storage center or server farm facility is first
5 available for use by the operating taxpayer, or first capable of being used by the operating
6 taxpayer, as a data storage center or server farm facility;

7 (2) "Constructing taxpayer", where more than one taxpayer is responsible for a
8 project, a taxpayer responsible for the purchase or construction of the facility, as opposed
9 to a taxpayer responsible for the equipping and ongoing operations of the facility;

10 (3) "Data storage center" or "server farm facility" or "facility", a facility
11 purchased, constructed, extended, improved or operating pursuant to this section,
12 provided that such business facility is engaged in:

13 (a) Data processing, hosting, and related services (NAICS 518210); or

14 (b) Internet publishing and broadcasting and web search portals (NAICS 519130),
15 at the business facility;

16 (4) "Existing facility", a data storage center or server farm facility in this state as
17 it existed prior to August 28, 2011, as determined by the department;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (5) "Expanding facility" or "expanding data storage center or server farm
19 facility", an existing facility or replacement facility that expands its operations in this state
20 on or after August 28, 2010, and has net new investment related to the expansion of
21 operations in this state of at least one million dollars during a period of up to twelve
22 consecutive months. An expanding facility shall continue to be an expanding facility
23 regardless of a subsequent change in or addition of operating taxpayers or constructing
24 taxpayers;

25 (6) "Expanding facility project" or "expanding data storage center or server farm
26 facility project", the purchase, construction, extension, improvement equipping and
27 operation of an expanding facility;

28 (7) "NAICS", the 2007 edition of the North American Industry Classification
29 System as prepared by the Executive Office of the President, Office of Management and
30 Budget. Any NAICS sector, subsector, industry group or industry identified in this section
31 shall include its corresponding classification in previous and subsequent federal industry
32 classification systems;

33 (8) "New facility" or "new data storage center or server farm facility", a facility
34 in this state meeting the following requirements:

35 (a) The facility is acquired by, or leased to, an operating taxpayer on or after
36 August 28, 2011. A facility shall be deemed to have been acquired by, or leased to, an
37 operating taxpayer on or after August 28, 2011, if the transfer of title to an operating
38 taxpayer, the transfer of possession pursuant to a binding contract to transfer title to an
39 operating taxpayer, or the commencement of the term of the lease to an operating taxpayer
40 occurs on or after August 28, 2011, or, if the facility is constructed, erected or installed by
41 or on behalf of an operating taxpayer, such construction, erection or installation is
42 commenced on or after August 28, 2011;

43 (b) If such facility was acquired by an operating taxpayer from another person or
44 persons on or after August 28, 2011, and such facility was employed prior to August 28,
45 2011, by any other person or persons in the operation of a data storage center or server
46 farm facility, the facility shall not be considered a new facility;

47 (c) Such facility is not a replacement facility, as defined in this section;

48 (d) The new facility project investment is at least five million dollars during a
49 period of up to thirty-six consecutive months. Where more than one taxpayer is
50 responsible for a project, the investment requirement may be met by an operating
51 taxpayer, a constructing taxpayer or a combination of constructing taxpayers and
52 operating taxpayers; and

53 (e) A new facility shall continue to be a new facility regardless of a subsequent
54 change in or addition of operating taxpayers or constructing taxpayers;

55 (9) "New data storage center or server farm facility project", or "new facility
56 project" the purchase, construction, extension, improvement equipping and operation of
57 a new facility;

58 (10) "Operating taxpayer", where more than one taxpayer is responsible for a
59 project, a taxpayer responsible for the equipping and ongoing operations of the facility, as
60 opposed to a taxpayer responsible for the purchasing or construction of the facility;

61 (11) "Project taxpayers", each constructing taxpayer and each operating taxpayer
62 for a data storage center or server farm facility project;

63 (12) "Replacement facility" or "replacement data storage center or server farm
64 facility", a facility in this state otherwise described in subdivision (8) of this section, but
65 which replaces another facility located within the state, which the taxpayer or a related
66 taxpayer previously operated but discontinued operating within one year prior to the
67 commencement of commercial operations at the new facility;

68 (13) "Taxpayer", the purchaser of tangible personal property or a service that is
69 subject to state or local sales or use tax and from whom state or local sales or use tax is
70 owed. Taxpayer shall not mean the seller charged by law with collecting the sales tax from
71 the purchaser.

72 2. Beginning August 28, 2011, in addition to the exemptions granted under chapter
73 144, there shall also be specifically exempted from state and local sales and use taxes
74 defined, levied, or calculated under section 32.085, sections 144.010 to 144.525, sections
75 144.600 to 144.761, or section 238.235:

76 (1) All electrical energy, gas, water, and other utilities including telecommunication
77 services used in a new data storage center or server farm facility;

78 (2) All machinery, equipment, and computers used in any new data storage center
79 or server farm facility; and

80 (3) All sales at retail of tangible personal property and materials for the purpose
81 of constructing, repairing, or remodeling any new data storage center or server farm
82 facility.

83 3. Any data storage center and server farm facility project seeking a tax exemption
84 under subsection 2 of this section shall submit a project plan to the department of economic
85 development, including identifying each known constructing taxpayer and each known
86 operating taxpayer for the project. The department of economic development shall
87 determine whether the project is eligible for the exemption under subsection 2 of this
88 section conditional upon subsequent verification by the department that the project meets
89 the requirement in paragraph (d) of subdivision (8) of subsection 1 of this section of at least
90 five million dollars of new facility investment over a time period not to exceed thirty-six
91 consecutive months. The department of economic development shall convey such

92 conditional approval to the department of revenue and the identified project taxpayers.
93 After a conditionally approved new facility project has met the investment amount, the
94 project taxpayers shall provide proof of such investment to the department of economic
95 development. Upon verification of such proof, the department of economic development
96 shall certify the project to the department of revenue as being eligible for the exemption
97 dating retroactively to the first day of the thirty-six month period or the first day of the
98 new investment in the event the investment is met in less than thirty-six months. The
99 department of revenue, upon receipt of adequate proof of the amount of sales taxes paid
100 since the first day of the thirty-six month period, or the first day of the new investment in
101 the event the investment is met in less than thirty-six months, shall issue a refund of sales
102 taxes paid as set forth in this section to each operating taxpayer and each constructing
103 taxpayer and issue a certificate of exemption to each new project taxpayer for ongoing
104 exemptions under subsection 2 of this section.

105 **4. Beginning August 28, 2010, in addition to the exemptions granted under chapter**
106 **144, there shall also be specifically exempted from state and local sales and use taxes**
107 **defined, levied, or calculated under section 32.085, sections 144.010 to 144.525, sections**
108 **144.600 to 144.761, or section 238.235:**

109 (1) All electrical energy, gas, water, and other utilities including telecommunication
110 services used in an expanding data storage center or server farm facility which, on an
111 annual basis, exceeds the amount of electrical energy, gas, water, and other utilities
112 including telecommunication services used in the existing facility or the replaced facility
113 prior to the expansion. "Amount" shall be measured in kilowatt hours, gallons, cubic feet
114 or other measures applicable to a utility service as opposed to in dollars, to account for
115 increases in rates;

116 (2) All machinery, equipment, and computers used in any new data storage center
117 or server farm facility, the cost of which, on an annual basis, exceeds the average of the
118 previous three years' expenditures on machinery, equipment, and computers at the existing
119 facility or the replaced facility prior to the expansion. Existing facilities or replaced
120 facilities in existence for less than three years shall have the average expenditures
121 calculated based upon the applicable time of existence; and

122 (3) All sales at retail of the tangible personal property and materials for the
123 purpose of constructing, repairing, or remodeling any expanding data storage center or
124 server farm facility.

125 **5. Any data storage center and server farm facility project seeking a tax exemption**
126 **under subsection 4 of this section shall submit an expanding project plan to the department**
127 **of economic development, including identifying each known constructing taxpayer and**
128 **each known operating taxpayer for the project. The project applicants shall also provide**

129 **proof satisfactory to the department of economic development that the facility is an**
130 **expanding facility and has net new investment related to the expansion of operations in this**
131 **state of at least one million dollars during a time period not to exceed twelve consecutive**
132 **months. Upon verification of such proof, the department of economic development shall**
133 **certify the project to the department of revenue as being eligible for the exemption. The**
134 **department of revenue shall issue a certificate of exemption to each expanding project**
135 **taxpayer for ongoing exemptions under subsection 4 of this section.**

136 **6. The sales tax exemptions in subsections 2 and 4 of this section shall be tied to the**
137 **new or expanding facility project. A certificate of exemption in the hands of a taxpayer**
138 **that is no longer an operating or constructing taxpayer of the new or expanding facility**
139 **project shall be invalid as of the date the taxpayer was no longer an operating or**
140 **constructing taxpayer of the new or expanding facility project. New certificates of**
141 **exemption shall be issued to successor constructing taxpayers and operating taxpayers at**
142 **such new or expanding facility projects. The right to the exemption by successor taxpayers**
143 **shall exist without regard to subsequent levels of investment in the new or expanding**
144 **facility by successor taxpayers.**

145 **7. The department of economic development and the department of revenue shall**
146 **cooperate in conducting random audits to make certain the intent of this section is**
147 **followed.**

148 **8. The department of economic development and the department of revenue shall**
149 **jointly prescribe such rules and regulations necessary to carry out the provisions of this**
150 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
151 **created under the authority delegated in this section shall become effective only if it**
152 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**
153 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
154 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**
155 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
156 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2011,**
157 **shall be invalid and void.**