

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 149**  
**98TH GENERAL ASSEMBLY**

0754H.09C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

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

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*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 mean:**

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

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

10       **(3) "County average wage", the average wages in each county as determined by the  
11 department for the most recently completed full calendar year. However, if the computed  
12 county average wage is above the statewide average wage, the statewide average wage shall  
13 be deemed the county average wage for such county for the purpose of determining  
14 eligibility;**

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.

15           **(4) "Data storage center" or "facility", a facility constructed, extended, improved,**  
16 **or operating under this section, provided that such business facility is engaged primarily**  
17 **in:**

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

19           **(b) Internet publishing and broadcasting and web search portals (NAICS 519130),**  
20 **at the business facility;**

21           **(5) "Existing facility", an operational data storage center in this state as it existed**  
22 **prior to August 28, 2015, as determined by the department;**

23           **(6) "Expanding facility" or "expanding data storage center", an existing facility**  
24 **or replacement facility that expands its operations in this state on or after August 28, 2015,**  
25 **and has net new investment related to the expansion of operations in this state of at least**  
26 **five million dollars during a period of up to twelve consecutive months and results in the**  
27 **creation of at least five new jobs during a period of up to twenty-four consecutive months**  
28 **from the date of conditional approval for an exemption under this section, if the average**  
29 **wage of the new jobs equals or exceeds one hundred fifty percent of the county average**  
30 **wage. An expanding facility shall continue to be an expanding facility regardless of a**  
31 **subsequent change in or addition of operating taxpayers or constructing taxpayers;**

32           **(7) "Expanding facility project" or "expanding data storage center project", the**  
33 **construction, extension, improvement, equipping, and operation of an expanding facility;**

34           **(8) "Investment" shall include the value of real and depreciable personal property,**  
35 **acquired as part of the new or expanding facility project which is used in the operation of**  
36 **the facility following conditional approval of an exemption under this section;**

37           **(9) "NAICS", the 2007 edition of the North American Industry Classification**  
38 **System as prepared by the Executive Office of the President, Office of Management and**  
39 **Budget. Any NAICS sector, subsector, industry group, or industry identified in this section**  
40 **shall include its corresponding classification in previous and subsequent federal industry**  
41 **classification systems;**

42           **(10) "New data storage center project" or "new facility project", the construction,**  
43 **extension, improvement, equipping, and operation of a new facility;**

44           **(11) "New facility" or "new data storage center", a facility in this state meeting the**  
45 **following requirements:**

46           **(a) The facility is acquired by or leased to an operating taxpayer on or after August**  
47 **28, 2015. A facility shall be deemed to have been acquired by or leased to an operating**  
48 **taxpayer on or after August 28, 2015, if the transfer of title to an operating taxpayer, the**  
49 **transfer of possession under a binding contract to transfer title to an operating taxpayer,**  
50 **or an operating taxpayer takes possession of the facility under the terms of the lease on or**

51 after August 28, 2015, or if the facility is constructed, erected, or installed by or on behalf  
52 of an operating taxpayer, such construction, erection, or installation is completed on or  
53 after August 28, 2015;

54 (b) Such facility is not an expanding or replacement facility, as defined in this  
55 section;

56 (c) The new facility project investment is at least twenty-five million dollars during  
57 a period of up to thirty-six consecutive months from the date of the conditional approval  
58 for an exemption under this section. If more than one taxpayer is responsible for a project,  
59 the investment requirement may be met by an operating taxpayer, a constructing taxpayer,  
60 or a combination of constructing taxpayers and operating taxpayers; and

61 (d) At least ten new jobs are created at the new facility during a period of up to  
62 thirty-six consecutive months from the date of conditional approval for an exemption  
63 under this section if the average wage of the new jobs equals or exceeds one hundred fifty  
64 percent of the county average wage;

65 Any facility which was acquired by an operating or constructing taxpayer from another  
66 person or persons on or after August 28, 2015, and such facility was employed prior to  
67 August 28, 2015, by any other person or persons in the operation of a data storage center  
68 shall not be considered a new facility. A new facility shall continue to be a new facility  
69 regardless of a subsequent change in or addition of operating taxpayers or constructing  
70 taxpayers;

71 (12) "New job", in the case of a new data center project, the total number of full-  
72 time employees located at a new data storage center for a period of up to thirty-six  
73 consecutive months from the date of conditional approval for an exemption under this  
74 section. In the case of an expanding data storage center project, the total number of full-  
75 time employees located at the expanding data storage center that exceeds the greater of the  
76 number of full-time employees located at the project facility on the date of the submission  
77 of a project plan under this section or for the twelve-month period prior to the date of the  
78 submission of a project plan, the average number of full-time employees located at the  
79 expanding data storage center facility. In the event the expanding data storage center  
80 facility has not been in operation for a full twelve-month period at the time of the  
81 submission of a project plan, the total number of full-time employees located at the  
82 expanded data storage center that exceeds the greater of the number of full-time employees  
83 located at the project facility on the date of the submission of a project plan under this  
84 section or the average number of full-time employees for the number of months the  
85 expanding data storage center facility has been in operation prior to the date of the  
86 submission of the project plan;

87           (13) "Notice of intent", a form developed by the department of economic  
88 development, completed by the project taxpayer, and submitted to the department, which  
89 states the project taxpayer's intent to construct or expand a data center and request the  
90 exemptions under this program;

91           (14) "Operating taxpayer", if more than one taxpayer is responsible for a project,  
92 the taxpayer responsible for the ongoing operations of the facility, as opposed to the  
93 taxpayer responsible for the purchasing or construction of the facility;

94           (15) "Project taxpayers", each constructing taxpayer and each operating taxpayer  
95 for a data storage center project;

96           (16) "Replacement facility", a facility in this state otherwise described in  
97 subdivision (7) of this subsection, but which replaces another facility located within the  
98 state, which the taxpayer or a related taxpayer previously operated but discontinued  
99 operating within one year prior to the commencement of commercial operations at the new  
100 facility;

101           (17) "Taxpayer", the purchaser of tangible personal property or a service that is  
102 subject to state or local sales or use tax and from whom state or local sales or use tax is  
103 owed. Taxpayer shall not mean the seller charged by law with collecting the sales tax from  
104 the purchaser.

105           2. In addition to the exemptions granted under chapter 144, project taxpayers for  
106 a new data storage center project shall be entitled, for a project period not to exceed fifteen  
107 years from the date of conditional approval under this section and subject to the  
108 requirements of subsection 3 of this section, to an exemption of one hundred percent of the  
109 state and local sales and use taxes defined, levied, or calculated under section 32.085,  
110 sections 144.010 to 144.525, sections 144.600 to 144.761, or section 238.235, limited to the  
111 net fiscal benefit of the state calculated over a ten year period, on:

112           (1) All electrical energy, gas, water, and other utilities including telecommunication  
113 and internet services used in a new data storage center;

114           (2) All machinery, equipment, and computers used in any new data storage center;  
115 and

116           (3) All sales at retail of tangible personal property and materials for the purpose  
117 of constructing any new data storage center.

118 The amount of any exemption provided under this subsection shall not exceed the  
119 projected net fiscal benefit to the state over a period of ten years, as determined by the  
120 department of economic development using the Regional Economic Modeling, Inc. dataset.

121           3. (1) Any data storage center project seeking a tax exemption under subsection  
122 2 of this section shall submit a notice of intent and a project plan to the department of

123 economic development, which shall identify each known constructing taxpayer and known  
124 operating taxpayer for the project and include any additional information the department  
125 of economic development may require to determine eligibility for the exemption. The  
126 department of economic development shall review the project plan and determine whether  
127 the project is eligible for the exemption under subsection 2 of this section, conditional upon  
128 subsequent verification by the department that the project meets the requirements in  
129 subsection 1 of this section for a new facility project. The department shall make such  
130 conditional determination within thirty days of submission by the operating taxpayer.  
131 Failure of the department to respond within thirty days shall result in a project plan being  
132 deemed conditionally approved.

133 (2) The department of economic development shall convey conditional approvals  
134 to the department of revenue and the identified project taxpayers. After a conditionally  
135 approved new facility has met the requirements in subsection 1 of this section for a new  
136 facility and the execution of the agreement specified in subsection 6 of this section, the  
137 project taxpayers shall provide proof of the same to the department of economic  
138 development. Upon verification of such proof, the department of economic development  
139 shall certify the new facility to the department of revenue as being eligible for the  
140 exemption dating retroactively to the first day of construction on the new facility. The  
141 department of revenue, upon receipt of adequate proof of the amount of sales taxes paid  
142 since the first day of construction, shall issue a refund of taxes paid but eligible for  
143 exemption under subsection 2 of this section to each operating taxpayer and each  
144 constructing taxpayer and issue a certificate of exemption to each new project taxpayer for  
145 ongoing exemptions under subsection 2 of this section. The department of revenue shall  
146 issue such a refund within thirty days of receipt of certification from the department of  
147 economic development.

148 (3) The commencement of the exemption period may be delayed at the option of the  
149 operating taxpayer, but not more than twenty-four months after the execution of the  
150 agreement required under subsection 6 of this section.

151 4. In addition to the exemptions granted under chapter 144, upon approval by the  
152 department of economic development, project taxpayers for expanding data center projects  
153 may, for a period not to exceed ten years, be specifically exempted from state and local  
154 sales and use taxes defined, levied, or calculated under section 32.085, sections 144.010 to  
155 144.525, sections 144.600 to 144.761, or section 238.235 on:

156 (1) All electrical energy, gas, water, and other utilities including telecommunication  
157 and internet services used in an expanding data storage center which, on an annual basis,  
158 exceeds the amount of electrical energy, gas, water, and other utilities including

159 telecommunication and internet services used in the existing facility or the replaced facility  
160 prior to the expansion. For purposes of this subdivision only, "amount" shall be measured  
161 in kilowatt hours, gallons, cubic feet, or other measures applicable to a utility service as  
162 opposed to in dollars, to account for increases in utility rates;

163 (2) All machinery, equipment, and computers used in any expanding data storage  
164 center; and

165 (3) All sales at retail of tangible personal property and materials for the purpose  
166 of constructing, repairing, or remodeling any expanding data storage center.

167 The amount of any exemption provided under this subsection shall not exceed the  
168 projected net fiscal benefit to the state over a period of ten years, as determined by the  
169 department of economic development using the Regional Economic Modeling, Inc., data  
170 set or comparable data.

171 5. (1) Any data storage center project seeking a tax exemption under subsection  
172 4 of this section shall submit a notice of intent and a project plan to the department of  
173 economic development, which shall identify each known constructing taxpayer and each  
174 known operating taxpayer for the project and include any additional information the  
175 department of economic development may reasonably require to determine eligibility for  
176 the exemption. The department of economic development shall review the project plan and  
177 determine whether the project is eligible for the exemption under subsection 4 of this  
178 section, conditional upon subsequent verification by the department that the project meets  
179 the requirements in subsection 1 of this section for an expanding facility project and the  
180 execution of the agreement specified in subsection 6 of this section. The department shall  
181 make such conditional determination within thirty days of submission by the operating  
182 taxpayer. Failure of the department to respond within thirty days shall result in a project  
183 plan being deemed conditionally approved.

184 (2) The department of economic development shall convey such conditional  
185 approval to the department of revenue and the identified project taxpayers. After a  
186 conditionally approved facility has met the requirements in subsection 1 of this section, the  
187 project taxpayers shall provide proof of the same to the department of economic  
188 development. Upon verification of such proof, the department of economic development  
189 shall certify the project to the department of revenue as being eligible for the exemption  
190 dating retroactively to the first day of the expansion of the facility. The department of  
191 revenue, upon receipt of adequate proof of the amount of sales taxes paid since the first day  
192 of the expansion of the facility, shall issue a refund of taxes paid but eligible for exemption  
193 under subsection 4 of this section to any applicable project taxpayer and issue a certificate  
194 of exemption to any applicable project taxpayer for ongoing exemptions under subsection

195 **4 of this section. The department of revenue shall issue such a refund within thirty days**  
196 **of receipt of certification from the department of economic development.**

197 **(3) The commencement of the exemption period may be delayed at the option of the**  
198 **operating taxpayer, but not more than twenty-four months after the execution of the**  
199 **agreement required under subsection 6 of this section.**

200 **6. (1) The exemptions in subsections 2 and 4 of this section shall be tied to the new**  
201 **or expanding facility project. A certificate of exemption in the hands of a taxpayer that is**  
202 **no longer an operating or constructing taxpayer of the new or expanding facility project**  
203 **shall be invalid as of the date the taxpayer was no longer an operating or constructing**  
204 **taxpayer of the new or expanding facility project. New certificates of exemption shall be**  
205 **issued to successor constructing taxpayers and operating taxpayers at such new or**  
206 **expanding facility projects. The right to the exemption by successor taxpayers shall exist**  
207 **without regard to subsequent levels of investment in the new or expanding facility by**  
208 **successor taxpayers.**

209 **(2) As a condition of receiving an exemption under subsection 2 or 4 of this section,**  
210 **the project taxpayers shall enter into an agreement with the department of economic**  
211 **development providing for repayment penalties in the event the data storage center project**  
212 **fails to comply with any of the requirements of this section.**

213 **(3) The department of revenue shall credit any amounts remitted by the project**  
214 **taxpayers under this subsection to the fund to which the sales and use taxes exempted**  
215 **would have otherwise been credited.**

216 **7. Any project taxpayer who submits a notice of intent to the department of**  
217 **economic development to expand a new facility by additional construction, extension,**  
218 **improvement, or equipping within five years of the date the new facility became operation**  
219 **shall be entitled to request the department undertake an additional analysis to determine**  
220 **the projected net fiscal benefit of the expansion to the state over a period of ten years as**  
221 **determined by the department using the Regional Economic Modeling, Inc. dataset or**  
222 **comparable data and shall be entitled to an exemption under this section not to exceed such**  
223 **fiscal benefit to the state for a period of not to exceed fifteen years.**

224 **8. The department of economic development and the department of revenue shall**  
225 **cooperate in conducting random audits to ensure that the intent of this section is followed.**

226 **9. Notwithstanding any other provision of law to the contrary, no recipient of an**  
227 **exemption pursuant to this section shall be eligible for benefits under any business**  
228 **recruitment tax credit, as defined in section 135.800.**

229 **10. The department of economic development and the department of revenue shall**  
230 **jointly prescribe such rules and regulations necessary to carry out the provisions of this**

231 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
232 **created under the authority delegated in this section shall become effective only if it**  
233 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
234 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**  
235 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
236 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
237 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2015,**  
238 **shall be invalid and void.**

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