

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

1. **Patron** Vivian E. Watts

3. **Committee** House Finance

4. **Title** Retail Sales and Use Tax; Data Center Exemption

2. **Bill Number** HB 1546

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would limit the amount of the Retail Sales and Use Tax data center exemption on equipment and enabling software as follows:

- If purchased or leased for use in a newly constructed data center, the amount of the exemption would be 100 percent;
- If purchased or leased as part of the first refresh cycle for a data center, the amount of the exemption would be 50 percent; and
- For all other purchases or leases, the amount of the exemption would be 25 percent.

Additionally, any major expansion of a data center would be eligible for the exemption in the same manner as provided for a newly constructed data center. "Major expansion of a data center" would mean an expansion of a data center in which the capital investment and job creation requirements are met, excluding any capital investment or jobs created as part of an existing data center.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. **Fiscal implications:**

Administrative Costs:

The Department of Taxation considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

This bill would result in an unknown but potentially significant gain in revenue for the Commonwealth and localities beginning in Fiscal Year 2025. Based upon data provided to the Virginia Economic Development Partnership (VEDP) by data centers, the estimated cost of the data center exemption to the Commonwealth under current law is as follows:

Fiscal Year	Aggregate Reported Exempt Equipment and Software Investment	Aggregate Estimated Cost to the Commonwealth Based Upon Reported Data
2022	\$9.4 billion	\$674 million
2023	\$15.6 billion	\$904 million

The aggregate estimated cost to the Commonwealth reflects the total negative revenue impact to the Commonwealth, including the General Fund, non-General Fund, and local revenue impact. Please note that these estimated costs are based upon data that was self-reported by data center operators and cannot be independently validated. In addition, certain companies did not report the requested information and, as a result, the actual impact could be higher.

Due to data limitations, the Department is not able to estimate the potential positive revenue impact of this bill’s changes to data center exemption. As a result, the extent of such positive revenue impact, if any, is unknown but potentially significant.

9. Specific agency or political subdivisions affected:

Virginia Economic Development Partnership Authority
Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Background

Virginia Code § 58.1-609.3 (18) provides an exemption for data center operators and their tenants from the RSUT for computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of such exempt equipment, provided that such computer equipment or enabling software is purchased or leased for use in a data center that is located in a Virginia locality, and the data center operator has entered into a memorandum of understanding with VEDP setting forth minimum capital investment and new job creation requirements associated with the operation or maintenance of the data center. The exemption does not apply to any computer software, otherwise taxable under Chapter 6 of Title 58.1 of the *Virginia Code*, sold separately from the computer equipment, nor does it apply to general building improvements or fixtures.

The exemption is available for data centers that:

- Make a new capital investment on or after January 1, 2009, of at least \$150 million; and,
- Result in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality.

The requirement of at least 50 new jobs is reduced to 10 new jobs if the data center is located in a distressed locality at the time of the execution of a memorandum of understanding with VEDP. Additionally, the requirement of a \$150 million capital investment is reduced to \$70 million for data centers that qualify for the reduced jobs requirement.

The exemption is scheduled to sunset June 30, 2035. The exemption, however, is extended to 2040 for a data center operator that on or after January 1, 2023, but before July 1, 2035:

- Makes a capital investment of at least \$35 billion in data centers in the Commonwealth;
- Creates at least 1,000 new full-time jobs; and
- Of the 1,000 new jobs, at least 100 of such jobs shall pay at least one and a half times the prevailing average wage in the Commonwealth.

The data center operator is eligible for further extension to 2050, if such operator on or after January 1, 2023, but before July 1, 2040:

- Makes a total capital investment of at least \$100 billion, inclusive of the initial \$35 billion investment;
- Creates a total of at least 2,500 direct new jobs; and
- Of the 2,500 new jobs, at least 100 of such jobs shall pay at least one and a half times the prevailing average wage in the Commonwealth.

Proposal

This bill would limit the amount of the Retail Sales and Use Tax data center exemption on equipment and enabling software as follows:

- If purchased or leased for use in a newly constructed data center, the amount of the exemption would be 100 percent;
- If purchased or leased as part of the first refresh cycle for a data center, the amount of the exemption would be 50 percent; and
- For all other purchases or leases, the amount of the exemption would be 25 percent.

For purposes of this limitation of the exemption, “first refresh cycle” would mean purchases or leases:

- Made to replace, repair, or upgrade the equipment or enabling software in order to improve performance of a data center, address technological obsolescence, improve energy efficiency, or remedy worn out equipment or enabling software, and

- Which occur no earlier than three and no later than five years after the date on which the data center becomes operational for commercial purposes.

The time frame of a data center's refresh cycle and the amount of exemption allowable to a data center would need to be included in any memorandum of understanding with the Virginia Economic Development Partnership Authority ("VEDP"). As a condition of such memorandum of understanding, the data center or its operator would be required to provide:

- A list of all equipment or enabling software purchased in the initial construction of the data center,
- A timeline for applicable refresh cycles of such equipment or enabling software, and
- A list of subsequent purchases or leases during the first refresh cycle period.

Additionally, any major expansion of a data center would be eligible for the exemption in the same manner as is provided for a newly constructed data center. "Major expansion of a data center" would mean an expansion of a data center in which the capital investment and job creation requirements are met, excluding any capital investment or jobs created as part of an existing data center.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

Similar Legislation

House Bill 116 and **Senate Bill 192** would require data centers to meet certain energy efficiency standards in order to be eligible for the Retail Sales and Use Tax exemption for qualifying data center purchases.

cc: Secretary of Finance

Date: 1/29/2024 JEM
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