

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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HOUSE BILL 1993

Short Title: Datacenter Sales Tax Bill. (Public)

Sponsors: Representative Gibson.

Referred to: Commerce, Small Business and Entrepreneurship, if favorable, Finance.

May 10, 2007

A BILL TO BE ENTITLED
AN ACT TO MAKE CERTAIN LARGE-SCALE DATACENTER PURCHASES OF
MACHINERY AND EQUIPMENT SUBJECT TO THE PRIVILEGE TAX AND
EXEMPT FROM SALES AND USE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(8f) Eligible datacenter. – A facility that satisfies each of the following conditions:

a. The facility is created and maintained to meet, is certified by a third party as meeting, and does meet the standards for Tier 4 classification under the classification system promulgated by the Uptime Institute, Inc., for datacenter site infrastructure functionality as that classification existed as of January 1, 2007.

b. The Secretary of Commerce has made a written determination of the following:

1. For development tier one areas, that at least one hundred fifty million dollars (\$150,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination of both, within five years after commencement of construction of the facility.

2. For development tier two or three areas, that at least three hundred million dollars (\$300,000,000) in private funds has been or will be invested in improvements to real property or installed datacenter machinery and equipment, or a combination of both, within five years after commencement of construction of the facility."

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1 **SECTION 2.** G.S. 105-164.13 is amended by adding a new subdivision to
2 read:

3 "(56) Sales of machinery and equipment to be located and used at an eligible
4 datacenter. If the level of investment required by G.S. 105-164.3(8f)b.
5 is not timely made, then the exemption provided under this subdivision
6 is forfeited. If the level of investment required by G.S. 105-164.3(8f)b.
7 is timely made but any machinery and equipment is not located and
8 used at an eligible datacenter, then the exemption provided for such
9 machinery and equipment under this subdivision is forfeited. A
10 taxpayer that forfeits an exemption under this subdivision is liable for
11 all past taxes avoided as a result of the forfeited exemption, computed
12 from the date the taxes would have been due if the exemption had not
13 been allowed, plus interest at the rate established under
14 G.S. 105-241.1(i). If the forfeiture is triggered due to the lack of a
15 timely investment required by G.S. 105-164.3(8f)b., then interest is
16 computed from the date the taxes would have been due if the
17 exemption had not been allowed. For all other forfeitures, interest is
18 computed from the time as of which the machinery or equipment was
19 put to a disqualifying use. The past taxes and interest are due 30 days
20 after the date the exemption is forfeited. A taxpayer that fails to pay
21 the past taxes and interest by the due date is subject to the provisions
22 of G.S. 105-236."

23 **SECTION 3.** Article 5F of Chapter 105 of the General Statutes is amended
24 by adding a section to read:

25 **"§ 105-187.51C. Tax imposed on datacenter machinery and equipment.**

26 (a) Tax. – A privilege tax is imposed on an eligible datacenter that purchases
27 machinery or equipment to be located and used at the datacenter.

28 (b) Rate. – The tax is one percent (1%) of the sales price of the equipment and
29 machinery to be located and used at the datacenter. The maximum tax is eighty dollars
30 (\$80.00) per article."

31 **SECTION 4.** Section 2 of this act becomes effective July 1, 2007, and
32 applies to sales made on or after that date. Section 3 of this act becomes effective July
33 1, 2007. The remainder of this act is effective when it becomes law.