

REPORT
STATE OF WISCONSIN
JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS
2023 ASSEMBLY BILL 302 / 2023 SENATE BILL 308

[Introduced by Representative Zimmerman and Senator Quinn]

This report relates to 2023 Assembly Bill 302 and its companion 2023 Senate Bill 308 (each companion may be referred to individually as the “bill”). The bill creates a sales and use tax exemption for equipment or software used at a qualified data center, as described below.

GENERAL NATURE OF PROPOSAL

Current law generally imposes a sales tax on retail sales of tangible personal property, certain coins and stamps, certain leased property affixed to realty, certain digital goods, and certain services, as specified in the statutes. The “sale” of an item includes a lease, license, or rental. There are statutory exemptions for sales of certain products and services, such as for aircraft parts and repair, drugs, durable medical equipment, and others. Additional exemptions may be claimed for products or services for which an exemption certificate may be obtained, as specified in the statutes, such as for direct mail, sales to affiliated entities, farm products, and others. Also certain organizations with tax-exempt status may qualify to make purchases exempt from sales tax, as specified in the statutes.

Additionally current law imposes a use tax on all products and services that are subject to the sales tax in any instance in which the sales tax is not charged and no exemption applies. For example, a state purchaser must report and pay the use tax on property or services purchased from an unregistered out-of-state seller, unless an exemption applies.

The bill would create a sales and use tax exemption for certain equipment or software used for the processing, storage, retrieval, or communication of data at a qualified data center, as certified by the Wisconsin Economic Development Corporation (WEDC). Items subject to exemption include servers and hardware, computer equipment, upgrades, energy equipment, cooling and controlled environment systems, water conservation systems, computer server equipment, conduits and cabling, monitoring and security systems, certain manufacturing components, software, other tangible property that is essential to the operations of the qualified data center, and all electricity used at a qualified data center.

A “qualified data center” means one or more buildings or an array of connected buildings owned, leased, or operated by the same business entity, or its affiliate, and for which all of the following apply:

- The buildings are rehabilitated or constructed to house a group of networked server computers to centralize the processing, storage, management, retrieval, communication, or dissemination of data and information.
- Within five years from the date on which WEDC certifies the data center as eligible to claim the exemption, the buildings create a minimum qualified investment in this state of \$150

million, for buildings located in a county having a population greater than 100,000; or \$100 million, for buildings located in a county having a population between 50,001 and 100,000; or \$50 million, for counties having a population up to 50,000.

A “qualified investment” means the aggregate, nonduplicative eligible data center costs expended at a qualified data center by an owner, operator, or tenant, or an affiliate of an owner, operator, or tenant, of the qualified data center. “Eligible data center costs” mean expenditures made after the effective date of the bill for the development, acquisition, construction, renovation, expansion, replacement, or repair and operation of a qualified data center in this state. The bill would take effect on the first day of the third month beginning after publication.

LEGALITY INVOLVED

There are no questions of legality involving the tax exemption created in the bill.

FISCAL EFFECT

The tax exemption created in the bill would require the state to forgo certain sales and use tax revenue, depending on the parameters of future data center projects in the state. In the Department of Revenue’s (DOR’s) fiscal estimate, the department provides an example of the forgone sales tax revenue for a “typical” qualifying data center, with estimated initial expenditures of \$157.1 million for IT equipment, \$45 million for construction, and \$13.4 million for other capital expenditures (\$215.5 million total), and annual operating expenses of \$18.5 million. DOR estimates that a single qualifying data center of this size would result in forgone sales tax revenue of \$8.5 million related to initial construction and \$735,000 per year related to operations. Also DOR estimates that the state would forgo an additional \$1.6 million in sales tax revenue on an annualized basis when equipment replacement begins (with an assumed five-year replacement schedule for IT equipment).

In a county in which a qualified data center is located, county sales tax revenue also would decrease by a proportionate amount. The amount of the decrease would depend on the size and location of the qualified data center.

Additionally, in WEDC’s fiscal estimate, the corporation states that it assumes additional staffing will be necessary to satisfy the administrative and certification requirements outlined in the bill, which will reduce resources available for other activities and programs.

PUBLIC POLICY INVOLVED

The Joint Survey Committee on Tax Exemptions finds that the tax exemption created in the bill is good public policy on a vote of Ayes, 9; Noes, 0.

06/20/23

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