

SENATE BILL 397

Q4, Q1

0lr2529
CF HB 1339

By: **Senators Hershey and Peters**

Introduced and read first time: January 27, 2020

Assigned to: Budget and Taxation

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 8, 2020

CHAPTER _____

1 AN ACT concerning

2 **Sales and Use Tax and Personal Property Tax – Exemptions – Data Centers**

3 FOR the purpose of providing an exemption from the sales and use tax for certain sales of
4 certain qualified data center personal property for use at certain qualified data
5 centers under certain circumstances; requiring an individual or a corporation to
6 apply to the Department of Commerce for an exemption certificate for the exemption;
7 requiring that the application include certain information; requiring the Department
8 of Commerce to certify eligibility for the exemption and each year to submit to the
9 Comptroller a list of eligible individuals and corporations; requiring the Comptroller
10 to issue a certificate of eligibility for the exemption within a certain number of days
11 after receiving the eligibility list; requiring that the certificate be renewed each year;
12 providing that the certificate may not be renewed for more than a certain number of
13 consecutive years, subject to a certain exception; requiring certificate holders to
14 maintain certain records and allow the Department of Commerce to inspect the
15 records for a minimum number of years after the certificate expires; authorizing the
16 Department of Commerce, under certain circumstances, to revoke the certificate;
17 requiring that the individual or corporation be afforded a certain appeal before the
18 Comptroller is notified of the revocation; authorizing the Comptroller to make a
19 certain assessment; authorizing the governing body of a county or municipal
20 corporation to reduce or eliminate the assessment of certain personal property used
21 in certain qualified data centers; requiring the governing body of a county or
22 municipal corporation to submit a copy of a certain law to the State Department of
23 Assessments and Taxation; providing that, if the State Department of Assessments
24 and Taxation receives a copy of the law on or before a certain date, the law is effective
25 for the next taxable year; requiring the State Department of Assessments and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Taxation, under certain circumstances, to provide a municipal corporation with a certain assessment of certain personal property; defining certain terms; providing for the application of certain provisions of this Act; and generally relating to exemptions from the sales and use tax and personal property tax for qualified data center personal property.

BY adding to

Article – Tax – General

Section 11–236

Annotated Code of Maryland

(2016 Replacement Volume and 2019 Supplement)

BY adding to

Article – Tax – Property

Section 7–246

Annotated Code of Maryland

(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Tax – General

11–236.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(2) “DATA CENTER” MEANS A BUILDING OR GROUP OF BUILDINGS
USED TO HOUSE COMPUTER SYSTEMS, COMPUTER STORAGE EQUIPMENT, AND
ASSOCIATED INFRASTRUCTURE THAT BUSINESSES OR OTHER ORGANIZATIONS USE
TO ORGANIZE, PROCESS, STORE, AND DISSEMINATE LARGE AMOUNTS OF DATA.

(3) “DEPARTMENT” MEANS THE DEPARTMENT OF COMMERCE.

(4) “OPPORTUNITY ZONE” MEANS AN AREA THAT HAS BEEN
DESIGNATED AS A QUALIFIED OPPORTUNITY ZONE IN THE STATE UNDER § 1400Z–1
OF THE INTERNAL REVENUE CODE.

(5) (I) “QUALIFIED DATA CENTER” MEANS A DATA CENTER
LOCATED IN THE STATE IN WHICH AN INDIVIDUAL OR A CORPORATION, WITHIN 3
YEARS AFTER SUBMITTING AN APPLICATION FOR THE SALES AND USE TAX
EXEMPTION UNDER THIS SECTION, HAS:

1 1. FOR A DATA CENTER LOCATED WITHIN A TIER I AREA,
2 INVESTED AT LEAST \$2,000,000 IN QUALIFIED DATA CENTER PERSONAL PROPERTY
3 AND CREATED AT LEAST FIVE QUALIFIED POSITIONS; OR

4 2. FOR A DATA CENTER LOCATED IN ANY OTHER AREA OF
5 THE STATE, INVESTED AT LEAST \$5,000,000 IN QUALIFIED DATA CENTER PERSONAL
6 PROPERTY AND CREATED AT LEAST FIVE QUALIFIED POSITIONS.

7 (II) “QUALIFIED DATA CENTER” INCLUDES:

8 1. A DATA CENTER THAT IS A CO-LOCATED OR HOSTING
9 DATA CENTER WHERE EQUIPMENT, SPACE, AND BANDWIDTH ARE AVAILABLE TO
10 LEASE TO MULTIPLE CUSTOMERS; AND

11 2. AN ENTERPRISE DATA CENTER OWNED AND
12 OPERATED BY THE COMPANY IT SUPPORTS.

13 (6) (I) “QUALIFIED DATA CENTER PERSONAL PROPERTY” MEANS
14 PERSONAL PROPERTY PURCHASED OR LEASED TO ESTABLISH OR OPERATE A DATA
15 CENTER.

16 (II) “QUALIFIED DATA CENTER PERSONAL PROPERTY”
17 INCLUDES:

18 1. COMPUTER EQUIPMENT OR ENABLING SOFTWARE
19 USED FOR THE PROCESSING, STORAGE, RETRIEVAL, OR COMMUNICATION OF DATA,
20 INCLUDING SERVERS, ROUTERS, CONNECTIONS, AND OTHER ENABLING HARDWARE
21 USED IN THE OPERATION OF THAT EQUIPMENT;

22 2. HEATING, VENTILATION, AND AIR-CONDITIONING
23 AND MECHANICAL SYSTEMS, INCLUDING CHILLERS, COOLING TOWERS,
24 AIR-HANDLING UNITS, PUMPS, ENERGY STORAGE OR ENERGY EFFICIENCY
25 TECHNOLOGY, AND OTHER CAPITAL EQUIPMENT USED IN THE OPERATION OF THAT
26 EQUIPMENT; AND

27 3. EQUIPMENT NECESSARY FOR THE GENERATION,
28 TRANSFORMATION, TRANSMISSION, DISTRIBUTION, OR MANAGEMENT OF
29 ELECTRICITY, INCLUDING EXTERIOR SUBSTATIONS, GENERATORS, TRANSFORMERS,
30 UNIT SUBSTATIONS, UNINTERRUPTIBLE POWER SUPPLY SYSTEMS, BATTERIES,
31 POWER DISTRIBUTION UNITS, REMOTE POWER PANELS, AND ANY OTHER CAPITAL
32 EQUIPMENT NECESSARY FOR THESE PURPOSES.

33 (7) (I) “QUALIFIED POSITION” MEANS A POSITION THAT:

1 1. IS A FULL-TIME POSITION OF INDEFINITE DURATION;

2 2. PAYS AT LEAST 150% OF THE STATE MINIMUM WAGE;

3 3. IS NEWLY CREATED BECAUSE A DATA CENTER BEGINS
4 OR EXPANDS IN A SINGLE LOCATION IN THE STATE; AND

5 4. IS FILLED.

6 (II) “QUALIFIED POSITION” DOES NOT INCLUDE A POSITION:

7 1. CREATED IF AN EMPLOYMENT FUNCTION IS SHIFTED
8 FROM AN EXISTING DATA CENTER IN THE STATE TO ANOTHER DATA CENTER OF
9 RELATED OWNERSHIP IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;

10 2. CREATED THROUGH A CHANGE IN OWNERSHIP OF A
11 TRADE OR BUSINESS;

12 3. CREATED THROUGH A CONSOLIDATION, MERGER, OR
13 RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN
14 THE STATE;

15 4. CREATED IF AN EMPLOYMENT FUNCTION IS
16 CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY IN THE STATE TO
17 ANOTHER BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;
18 OR

19 5. FILLED FOR A PERIOD OF LESS THAN 12 MONTHS.

20 (8) “TIER I AREA” MEANS:

21 (I) A TIER I COUNTY AS DEFINED IN § 1-101 OF THE ECONOMIC
22 DEVELOPMENT ARTICLE; OR

23 (II) AN OPPORTUNITY ZONE.

24 (B) THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF QUALIFIED
25 DATA CENTER PERSONAL PROPERTY FOR USE AT A QUALIFIED DATA CENTER IF THE
26 BUYER PROVIDES THE VENDOR WITH EVIDENCE OF ELIGIBILITY FOR THE
27 EXEMPTION ISSUED BY THE COMPTROLLER.

28 (C) (1) TO QUALIFY FOR THE SALES AND USE TAX EXEMPTION UNDER
29 SUBSECTION (B) OF THIS SECTION, AN INDIVIDUAL OR A CORPORATION SHALL FILE
30 AN APPLICATION FOR AN EXEMPTION CERTIFICATE WITH THE DEPARTMENT.

(2) THE APPLICATION MUST:

(I) DEMONSTRATE THAT THE APPLICANT INTENDS TO MEET THE REQUIREMENTS OF A QUALIFIED DATA CENTER; AND

(II) INCLUDE ANY INFORMATION THE DEPARTMENT REQUIRES TO EVIDENCE THE CAPACITY AND INTENTION OF THE APPLICANT TO FULFILL THE COMMITMENTS SET FORTH IN THE APPLICANT'S APPLICATION.

(3) IF, BASED ON THE INFORMATION AND SUPPORTING DOCUMENTATION PROVIDED IN THE APPLICATION, THE DEPARTMENT DETERMINES THE APPLICANT IS ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT SHALL CERTIFY THE ELIGIBILITY OF THE APPLICANT.

(D) (1) EACH YEAR, THE DEPARTMENT SHALL PROVIDE THE COMPTROLLER WITH A LIST OF INDIVIDUALS AND CORPORATIONS THAT THE DEPARTMENT DETERMINES ARE ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.

(2) WITHIN 30 DAYS AFTER RECEIVING THE LIST DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE COMPTROLLER SHALL ISSUE TO EACH INDIVIDUAL AND CORPORATION LISTED A CERTIFICATE OF ELIGIBILITY FOR THE SALES AND USE TAX EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.

(3) (I) THE CERTIFICATE OF ELIGIBILITY ISSUED UNDER PARAGRAPH (2) OF THIS SUBSECTION:

~~(H)~~ 1. MUST BE RENEWED EACH YEAR; AND

~~(H)~~ 2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, MAY NOT BE RENEWED FOR MORE THAN 10 CONSECUTIVE YEARS.

(II) IF THE INDIVIDUAL OR CORPORATION INVESTS AT LEAST \$250,000,000 IN QUALIFIED DATA CENTER PERSONAL PROPERTY, THE CERTIFICATE OF ELIGIBILITY MAY BE RENEWED FOR UP TO 20 CONSECUTIVE YEARS.

(E) FOR AT LEAST 3 YEARS AFTER THE TERMINATION OF A CERTIFICATE ISSUED UNDER SUBSECTION (D) OF THIS SECTION, EACH INDIVIDUAL OR CORPORATION THAT RECEIVES THE CERTIFICATE SHALL:

(1) MAINTAIN A RECORD OF:

(I) THE AMOUNT OF SALES AND USE TAX THAT WAS NOT PAID AS A RESULT OF THE CERTIFICATE;

(II) THE NUMBER OF QUALIFIED POSITIONS CREATED; AND

(III) THE INVESTMENT IN QUALIFIED DATA CENTER PERSONAL PROPERTY; AND

(2) ALLOW THE DEPARTMENT TO INSPECT THE RECORDS DESCRIBED IN ITEM (1) OF THIS SUBSECTION.

(F) (1) THE DEPARTMENT MAY REVOKE A CERTIFICATE OF ELIGIBILITY UNDER SUBSECTION (D) OF THIS SECTION IF ANY REPRESENTATION MADE IN CONNECTION WITH THE APPLICATION FOR THE CERTIFICATE IS DETERMINED BY THE DEPARTMENT TO HAVE BEEN FALSE WHEN MADE OR IF THE APPLICANT HAS FAILED TO FULFILL THE APPLICANT'S COMMITMENTS UNDER THE APPLICATION.

(2) THE REVOCATION MAY BE IN FULL OR IN PART AS THE DEPARTMENT MAY DETERMINE.

(3) THE INDIVIDUAL OR CORPORATION SHALL HAVE AN OPPORTUNITY TO APPEAL ANY REVOCATION TO THE DEPARTMENT BEFORE NOTIFICATION OF THE COMPTROLLER.

(4) THE COMPTROLLER MAY MAKE AN ASSESSMENT AGAINST THE INDIVIDUAL OR CORPORATION TO RECAPTURE ANY AMOUNT OF SALES AND USE TAX THAT THE INDIVIDUAL OR CORPORATION HAS NOT PAID AS A RESULT OF AN EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Tax – Property

7-246.

(A) IN THIS SECTION, “QUALIFIED DATA CENTER” AND “QUALIFIED DATA CENTER PERSONAL PROPERTY” HAVE THE MEANINGS STATED IN § 11-236 OF THE TAX – GENERAL ARTICLE.

(B) THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION MAY REDUCE OR ELIMINATE, BY LAW, THE PERCENTAGE OF THE ASSESSMENT OF ANY QUALIFIED DATA CENTER PERSONAL PROPERTY USED IN A QUALIFIED DATA

1 CENTER THAT IS SUBJECT TO THE COUNTY OR MUNICIPAL CORPORATION PROPERTY
2 TAX UNDER THIS TITLE.

3 (C) (1) A COUNTY OR MUNICIPAL CORPORATION THAT REDUCES OR
4 ELIMINATES THE PERCENTAGE OF ASSESSMENT OF TAXABLE QUALIFIED DATA
5 CENTER PERSONAL PROPERTY UNDER SUBSECTION (B) OF THIS SECTION SHALL
6 SUBMIT A COPY OF THE LAW TO THE DEPARTMENT.

7 (2) IF THE DEPARTMENT RECEIVES A COPY OF THE LAW ON OR
8 BEFORE MAY 1, THE CHANGE WILL BE EFFECTIVE FOR THE TAXABLE YEAR
9 FOLLOWING THE DATE THE LAW IS ENACTED.

10 (D) IF ANY QUALIFIED DATA CENTER PERSONAL PROPERTY IS EXEMPT
11 UNDER SUBSECTION (C) OF THIS SECTION FROM COUNTY PROPERTY TAX BUT IS
12 SUBJECT TO MUNICIPAL CORPORATION PROPERTY TAX, THE DEPARTMENT OR THE
13 SUPERVISOR SHALL PROVIDE THE MUNICIPAL CORPORATION WITH THE
14 ASSESSMENT OF THE QUALIFIED DATA CENTER PERSONAL PROPERTY.

15 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be
16 applicable to all taxable years beginning after June 30, 2020.

17 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
18 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.