

HOUSE BILL 1339

Q4, Q1

01r2231
CF SB 397

By: **Delegates Jacobs, D. Barnes, Anderton, Arentz, Buckel, Cox, Crosby, Ghrist, Hornberger, Krebs, Mautz, McComas, Otto, Patterson, Reilly, Saab, and Walker**

Introduced and read first time: February 7, 2020

Assigned to: Ways and Means

A BILL ENTITLED

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; requiring certificate holders to maintain certain records and allow
14 the Department of Commerce to inspect the records for a minimum number of years
15 after the certificate expires; authorizing the Department of Commerce, under certain
16 circumstances, to revoke the certificate; requiring that the individual or corporation
17 be afforded a certain appeal before the Comptroller is notified of the revocation;
18 authorizing the Comptroller to make a certain assessment; authorizing the
19 governing body of a county or municipal corporation to reduce or eliminate the
20 assessment of certain personal property used in certain qualified data centers;
21 requiring the governing body of a county or municipal corporation to submit a copy
22 of a certain law to the State Department of Assessments and Taxation; providing
23 that, if the State Department of Assessments and Taxation receives a copy of the law
24 on or before a certain date, the law is effective for the next taxable year; requiring
25 the State Department of Assessments and Taxation, under certain circumstances, to
26 provide a municipal corporation with a certain assessment of certain personal
27 property; defining certain terms; providing for the application of certain provisions
28 of this Act; and generally relating to exemptions from the sales and use tax and
29 personal property tax for qualified data center personal property.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Tax – General
3 Section 11–236
4 Annotated Code of Maryland
5 (2016 Replacement Volume and 2019 Supplement)

6 BY adding to
7 Article – Tax – Property
8 Section 7–246
9 Annotated Code of Maryland
10 (2019 Replacement Volume)

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

13 **Article – Tax – General**

14 **11–236.**

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

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

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

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

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

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

32 2. FOR A DATA CENTER LOCATED IN ANY OTHER AREA OF
33 THE STATE, INVESTED AT LEAST \$5,000,000 IN QUALIFIED DATA CENTER PERSONAL

1 PROPERTY AND CREATED AT LEAST FIVE QUALIFIED POSITIONS.

2 (II) "QUALIFIED DATA CENTER" INCLUDES:

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

6 2. AN ENTERPRISE DATA CENTER OWNED AND
7 OPERATED BY THE COMPANY IT SUPPORTS.

8 (6) (I) "QUALIFIED DATA CENTER PERSONAL PROPERTY" MEANS
9 PERSONAL PROPERTY PURCHASED OR LEASED TO ESTABLISH OR OPERATE A DATA
10 CENTER.

11 (II) "QUALIFIED DATA CENTER PERSONAL PROPERTY"
12 INCLUDES:

13 1. COMPUTER EQUIPMENT OR ENABLING SOFTWARE
14 USED FOR THE PROCESSING, STORAGE, RETRIEVAL, OR COMMUNICATION OF DATA,
15 INCLUDING SERVERS, ROUTERS, CONNECTIONS, AND OTHER ENABLING HARDWARE
16 USED IN THE OPERATION OF THAT EQUIPMENT;

17 2. HEATING, VENTILATION, AND AIR-CONDITIONING
18 AND MECHANICAL SYSTEMS, INCLUDING CHILLERS, COOLING TOWERS,
19 AIR-HANDLING UNITS, PUMPS, ENERGY STORAGE OR ENERGY EFFICIENCY
20 TECHNOLOGY, AND OTHER CAPITAL EQUIPMENT USED IN THE OPERATION OF THAT
21 EQUIPMENT; AND

22 3. EQUIPMENT NECESSARY FOR THE GENERATION,
23 TRANSFORMATION, TRANSMISSION, DISTRIBUTION, OR MANAGEMENT OF
24 ELECTRICITY, INCLUDING EXTERIOR SUBSTATIONS, GENERATORS, TRANSFORMERS,
25 UNIT SUBSTATIONS, UNINTERRUPTIBLE POWER SUPPLY SYSTEMS, BATTERIES,
26 POWER DISTRIBUTION UNITS, REMOTE POWER PANELS, AND ANY OTHER CAPITAL
27 EQUIPMENT NECESSARY FOR THESE PURPOSES.

28 (7) (I) "QUALIFIED POSITION" MEANS A POSITION THAT:

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

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

31 3. IS NEWLY CREATED BECAUSE A DATA CENTER BEGINS

1 OR EXPANDS IN A SINGLE LOCATION IN THE STATE; AND

2 4. IS FILLED.

3 (II) "QUALIFIED POSITION" DOES NOT INCLUDE A POSITION:

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

7 2. CREATED THROUGH A CHANGE IN OWNERSHIP OF A
8 TRADE OR BUSINESS;

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

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

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

17 (8) "TIER I AREA" MEANS:

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

20 (II) AN OPPORTUNITY ZONE.

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

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

28 (2) THE APPLICATION MUST:

29 (I) DEMONSTRATE THAT THE APPLICANT INTENDS TO MEET

1 THE REQUIREMENTS OF A QUALIFIED DATA CENTER; AND

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

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

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

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

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

20 (I) MUST BE RENEWED EACH YEAR; AND

21 (II) MAY NOT BE RENEWED FOR MORE THAN 10 CONSECUTIVE
22 YEARS.

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

26 (1) MAINTAIN A RECORD OF:

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

29 (II) THE NUMBER OF QUALIFIED POSITIONS CREATED; AND

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

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

4 **(D) IF ANY QUALIFIED DATA CENTER PERSONAL PROPERTY IS EXEMPT**
5 **UNDER SUBSECTION (C) OF THIS SECTION FROM COUNTY PROPERTY TAX BUT IS**
6 **SUBJECT TO MUNICIPAL CORPORATION PROPERTY TAX, THE DEPARTMENT OR THE**
7 **SUPERVISOR SHALL PROVIDE THE MUNICIPAL CORPORATION WITH THE**
8 **ASSESSMENT OF THE QUALIFIED DATA CENTER PERSONAL PROPERTY.**

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

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
12 1, 2020.