

Business Tax Tip #28

Sales and Use Tax Exemption for Personal Property Used to Establish or Operate Data Centers

Introduction

In general, the purchase of computer systems and computer equipment is subject to sales and use tax. The exemptions detailed in this Tax Tip apply only to qualified data centers with a certificate of sales and use tax exemption as defined below.

What is a Qualified Data Center?

A “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.

A “qualified data center” is a data center located in Maryland in which an individual or a corporation within three years after submitting an application for the sales and use tax exemption has:

- invested at least \$2,000,000 in qualified data center personal property and created at least five qualified positions in a data center located within a Tier 1 area;¹ or
- invested at least \$5,000,000 in qualified data center personal property and created at least five qualified positions in a data center located in any other area of Maryland.

What is a “Qualified Position”?

A “qualified position” is a full-time position of indefinite duration that:

- pays at least 150% of the state minimum wage,
- is newly created because a data center begins or expands in a single location in the state, and
- is filled.

¹ Please see Tax-General Article § 11-236(A)(8) for the definition of a Tier I area.

How to become certified as a Qualified Data Center

Purchases of a computer systems and computer equipment are not exempt from Maryland sales and use tax unless the qualified data center for which the purchases are being made is certified in accord with Maryland law. In order to become qualified, the individual or corporation seeking the certification must:

- file an Application for Exemption with the Maryland Department of Commerce; *and*
- receive a Sales and Use Tax Exemption Certificate from the Maryland Comptroller's office.

Application for Exemption Certificate

An individual or corporation must first file an application with the Maryland Department of Commerce. The application must:

- demonstrate that the applicant intends to meet the requirements of a qualified data center; and
- include any information required by the Maryland Department of Commerce.

The application shall be reviewed by the Maryland Department of Commerce. If approved, the Maryland Department of Commerce shall certify the applicant's eligibility for the sales and use tax exemption certificate. For more information about applying for the exemption certificate, please see the Maryland Department of Commerce's website at: <https://commerce.maryland.gov/>

Sales and Use Tax Exemption Certificate

Upon notification from the Maryland Department of Commerce, the Maryland Comptroller's office shall issue a sales and use tax exemption certificate to eligible individuals and corporations within 30 days. The Maryland Comptroller's office cannot issue a sales and use tax exemption certificate until the list of certified applicants has been received from the Maryland Department of Commerce.

What Data Center Purchases are Exempt from Sales and Use Tax?

The sales and use tax exemption only applies to the sale or lease of "qualified data center personal property" purchased or leased to establish or operate a qualified data center.

Qualified data center personal property means the following:

- Computer equipment or enabling software used for the processing, storage, retrieval, or communication of data including:
 - servers;
 - routers;

- connections;
- other enabling hardware used in the operation of that equipment;
- Heating, ventilation, air-conditioning, and mechanical systems, including:
 - chillers;
 - cooling towers;
 - air-handling units;
 - pumps;
 - energy storage or energy efficiency technology;
 - other capital equipment used in the operation of that equipment; and
- Equipment necessary for the generation, transformation, transmission, distribution, or management of electricity, including:
 - exterior substations;
 - generators;
 - transformers;
 - unit substations;
 - uninterruptible power supply systems;
 - batteries;
 - power distribution units ;
 - remote power panels; and
 - any other capital equipment necessary for these purposes.

Real Property Versus Tangible Personal Property

Certain qualified data center personal property when attached to a data center may lose its classification as tangible personal property when affixed to real property. The Comptroller's office shall consider qualified data center personal property to retain its characterization as tangible personal property notwithstanding COMAR 03.06.01.19. As such, the exemption will apply to the purchase or lease of qualified data center personal property even if those materials are affixed to real property and normally considered part of the real estate.

Electricity

The purchase of electricity by a qualified data center is not exempt from sales and use tax. Electricity used to operate a qualified data center does not qualify as qualified data center personal property.

Can a Contractor Purchase Qualified Data Center Personal Property on behalf of a Qualified Data Center?

A person who, because of a contractual obligation, purchases qualified data center personal property that will be incorporated into a qualified data center located in Maryland, may use the

sales and use tax exemption certificate to purchase the material tax-free. In order to purchase the material tax-free, the buyer shall provide the supplier with the exemption certificate and written notification that the property will be incorporated into a qualified data center. The retail sale or use of all equipment, tools, expendable supplies, and other items which are used to install the qualified data center personal property is subject to tax in all instances.

When Can I Purchase Qualified Data Center Personal Property Tax Free?

An individual or corporation can purchase qualified personal property without sales and use tax only if the buyer provides the vendor with the sales and use tax exemption certificate issued by the Maryland Comptroller's office. Therefore, the individual or corporation must have its application approved by Maryland Department of Commerce *and* receive a sales and use tax exemption certification prior to making a purchase.

What Happens if I Don't Properly Pay Sales and Use Tax?

The Maryland Comptroller's office may assess an individual or a corporation that does not properly pay sales and use tax on purchases. This may occur if an individual or corporation purchases property but does not receive an exemption certificate or purchases property that is not qualified data center personal property with an exemption certificate.

Are there any other state tax advantages as a Qualified Data Center?

A qualified data center may be subject to a reduced or zero tax rate for county or municipal property tax. For additional information, please visit the Maryland Department of Assessments and Taxation at <https://dat.maryland.gov/Pages/default.aspx>

What can I do if my application for an Exemption Certificate is denied?

You may appeal the denial of your application for exemption certificate with the Maryland Department of Commerce. You should not file an appeal with the Maryland Comptroller's office.