

**SUBSTITUTE FOR
SENATE BILL NO. 237**

A bill to amend 1937 PA 94, entitled
"Use tax act,"
by amending section 4cc (MCL 205.94cc), as added by 2015 PA 252.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4cc. (1) Subject to subsections (2) and (3), beginning
2 January 1, 2016 through December 31, ~~2035~~, **2046**, the tax under this
3 act does not apply to the storage, use, or consumption of data
4 center equipment sold to the owner or operator of a qualified data
5 center or a colocated business for assembly, use, or consumption in
6 the operations of the qualified data center or data center
7 equipment sold or provided to a person engaged in the business of
8 constructing, altering, repairing, or improving real estate for
9 others to the extent the data center equipment is to be affixed to



1 or made a structural part of a qualified data center.

2 (2) The exemption under ~~this section only~~ **subsection (1)**
 3 continues to apply after January 1, 2022, **only** if the numbers
 4 gathered by the local economic development corporations are
 5 certified and reported to the ~~department of talent and economic~~
 6 ~~development~~ **Michigan strategic fund** and subsequently forwarded to
 7 the department and demonstrate that the qualified data centers, the
 8 colocated businesses, and the contractors of the qualified data
 9 centers, collectively, have, in aggregate, established in this
 10 state at least 400 data center industry jobs or data center
 11 industry related jobs, or a combination of both, since January 1,
 12 2016. The ~~department of talent and economic development~~ **Michigan**
 13 **strategic fund** shall submit a report no later than April 1, 2022
 14 related to the number of data center industry jobs or data center
 15 industry related jobs that have been established since January 1,
 16 2016 to the speaker and minority leader of the house of
 17 representatives, the majority and minority leaders of the senate,
 18 and the governor. **As used in this subsection and subsection (3),**
 19 **"data center industry jobs" and "data center industry related jobs"**
 20 **do not include qualified new jobs as that term is defined in**
 21 **subsection (8) (e) (vii) (D) .**

22 (3) The exemption under ~~this section only~~ **subsection (1)**
 23 continues to apply after January 1, 2026, **only** if the numbers
 24 gathered by the local economic development corporations are
 25 certified and reported to the ~~department of talent and economic~~
 26 ~~development~~ **Michigan strategic fund** and subsequently forwarded to
 27 the department and demonstrate that the qualified data centers, the
 28 colocated businesses, and the contractors of the qualified data
 29 centers, collectively, have, in aggregate, established in this



1 state at least 1,000 data center industry jobs or data center
2 industry related jobs, or a combination of both, since January 1,
3 2016. The ~~department of talent and economic development~~ **Michigan**
4 **strategic fund** shall submit a report no later than April 1, 2026
5 related to the number of data center industry jobs or data center
6 industry related jobs that have been established since January 1,
7 2016 to the speaker and minority leader of the house of
8 representatives, the majority and minority leaders of the senate,
9 and the governor.

10 (4) Subject to subsection (5), beginning on the effective date
11 of the amendatory act that added this subsection through December
12 31, 2046 or, with respect to an enterprise data center subject to a
13 certificate that is located on the property included in a
14 brownfield plan under the brownfield redevelopment financing act,
15 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once
16 an industrial site used primarily as a power plant to generate
17 electricity for sale, through December 31, 2061, the storage, use,
18 or consumption of data center equipment sold to either of the
19 following is exempt from the tax imposed by this act:

20 (a) A qualified entity or its affiliates for assembly, use, or
21 consumption in the operations of an enterprise data center subject
22 to a certificate.

23 (b) A person engaged in the business of constructing,
24 altering, repairing, or improving real estate for others to the
25 extent the data center equipment is to be affixed to or made a
26 structural part of an enterprise data center subject to a
27 certificate.

28 (5) In order for a purchaser to claim an exemption under
29 subsection (4), at the time the data center equipment is sold to



1 the purchaser, the qualified entity must have received a
2 certificate for that facility which is in good standing.

3 (6) All of the following apply with respect to the exemption
4 under subsection (4):

5 (a) A person seeking a certificate for an enterprise data
6 center must apply to the Michigan strategic fund on a form and in
7 the manner prescribed by the Michigan strategic fund. The
8 application must include an affirmation signed by the applicant
9 stating that it expects the facility to satisfy each of the
10 criteria for an enterprise data center under subsection (8)(e) and
11 the anticipated time frame for doing so, which must not exceed 6
12 years. Within 120 days after receiving a complete and correct
13 application, the Michigan strategic fund or its designees, which
14 may include authorized employees, officers, and agents of the
15 Michigan strategic fund and employees of the Michigan economic
16 development corporation, shall review the application and either
17 issue a certificate to the applicant or provide written reasons for
18 its denial. The certificate must specify a time frame for a
19 facility to satisfy each of the criteria for an enterprise data
20 center under subsection (8)(e), which time frame must be the lesser
21 of 6 years or the time frame identified by the applicant on the
22 application. The Michigan strategic fund shall provide the
23 department with a copy of each certificate issued under this
24 subdivision.

25 (b) The qualified entity of a facility for which a certificate
26 has been issued shall report to the Michigan strategic fund
27 purchases for which an exemption is claimed under subsection (4),
28 and employment, tax withholding, capital investment, and other
29 information required by the Michigan strategic fund to determine



1 whether the facility continues to qualify as an enterprise data
2 center. The Michigan strategic fund shall provide the department
3 with a copy of each report received under this subdivision from a
4 qualified entity. The report required by this subdivision is
5 subject to audit and must be made on an annual basis following
6 issuance of the certificate. The report required by this
7 subdivision must not include any remittance for tax and does not
8 constitute a return or otherwise alleviate any obligations under
9 section 6. Except for the provision of a copy of each report to the
10 department as required under this subdivision, the Michigan
11 strategic fund shall not disclose any information that is not
12 aggregated or any information that could be used to identify a
13 specific person or data center.

14 (c) The Michigan strategic fund shall revoke a certificate
15 issued under subdivision (a) if it determines a facility no longer
16 meets the definition of an enterprise data center. If the Michigan
17 strategic fund determines revocation is appropriate, it shall
18 provide written notice to the qualified entity and the department
19 not less than 60 days, but not more than 180 days, before
20 revocation, notifying the qualified entity of its preliminary
21 determination to revoke the certificate and providing the qualified
22 entity an opportunity to demonstrate, within the time period
23 specified in the notice, that the facility continues to meet the
24 definition of an enterprise data center. Following the expiration
25 of the time period specified in the notice, if the Michigan
26 strategic fund determines that the facility does not meet the
27 definition of an enterprise data center, the Michigan strategic
28 fund shall revoke the certificate. If revocation occurs not more
29 than 10 years after issuance of the certificate, the former



1 qualified entity shall pay to the department an amount equal to the
2 entire amount of the tax exemptions stemming from the certificate
3 that have been received under subsection (4) by all persons, plus
4 interest as specified in section 23(2) of 1941 PA 122, MCL 205.23,
5 calculated from January 1 of the year the exemption was received
6 until the amount is paid to the department under this subdivision.
7 If revocation occurs more than 10 years after issuance of the
8 certificate, the former qualified entity shall pay to the
9 department an amount equal to the entire amount of the tax
10 exemptions stemming from the certificate that have been received
11 under subsection (4) by all persons, plus interest as specified in
12 section 23(2) of 1941 PA 122, MCL 205.23, calculated from January 1
13 of the year the exemption was received until the amount is paid to
14 the department under this subdivision, unless the Michigan
15 strategic fund determines, pursuant to published guidelines, that a
16 lesser amount, but not less than an amount equal to 50% of the
17 entire amount of the tax exemptions stemming from the certificate
18 that have been received by all persons under subsection (4), is
19 appropriate after evaluating the circumstances. During the time
20 period specified in the notice described in this subdivision, all
21 persons must cease claiming a tax exemption stemming from the
22 certificate under subsection (4). If a certificate is revoked, the
23 Michigan strategic fund shall notify the department within 5 days
24 after the revocation.

25 (7) A person engaged in the business of constructing,
26 altering, repairing, or improving real estate for others that has
27 claimed an exemption under subsection (4)(b) for a particular
28 facility must submit an annual summary report to the qualified
29 entity or former qualified entity to which a certificate for that



1 facility was issued on or before January 1 of each year that
2 provides, at a minimum, information sufficient to identify the
3 person that made the purchases and the purchase price of all items
4 purchased each month of that year. Such a person must also maintain
5 all invoices, bills of sale, or similar documents for all claimed
6 exempt purchases that indicate the date of purchase, the items
7 purchased, and the purchase price of the property that is
8 identified in the summary report for 4 years after the date of the
9 purchase. Except as otherwise provided in subsection (6) (b), the
10 Michigan strategic fund shall not disclose any information that is
11 not aggregated or any information that could be used to identify a
12 specific person or data center.

13 (8) ~~(4)~~—As used in this section:

14 (a) "Affiliate" means a person that directly, or indirectly
15 through 1 or more intermediaries, controls, is controlled by, or is
16 under common control with a specified person.

17 (b) "Certificate" means the document issued by the Michigan
18 strategic fund to an applicant under subsection (6) (a) that
19 certifies or otherwise establishes that the facility developed,
20 owned, and operated by the applicant or an affiliate of the
21 applicant, or to be developed, owned, and operated by the applicant
22 or an affiliate of the applicant, and identified in that document
23 qualifies as an enterprise data center under this section.

24 (c) ~~(b)~~—"Colocated business" means a person that has entered
25 into a contract with the owner or operator of a qualified data
26 center to use or deploy data center equipment physically located
27 within the qualified data center for a period of 1 or more years.

28 (d) ~~(e)~~—"Data center equipment" means only computers, servers,
29 routers, switches, peripheral computer devices, racks, shelving,



1 cabling, wiring, storage batteries, back-up generators,
2 uninterrupted power supply units, environmental control equipment,
3 other redundant power supply equipment, and prewritten computer
4 software used in operating, managing, or maintaining the qualified
5 data center **or enterprise data center** or the business of the
6 qualified data center or a colocated business. Data center
7 equipment also includes any construction materials used or
8 assembled **for the construction or modification of an enterprise**
9 **data center or**, under the qualified data center's proprietary
10 method, for the construction or modification of a qualified data
11 center, including, but not limited to, building materials,
12 infrastructure, machinery, wiring, cabling, devices, tools, and
13 equipment that would otherwise be considered a fixture or related
14 equipment. Data center equipment does not include any equipment
15 owned by a third party that is used to supply the qualified data
16 center's primary power.

17 (e) **"Enterprise data center"** means, subject to subdivision
18 (f), a facility that the Michigan strategic fund determines meets,
19 or is expected to meet within the time frame set forth in the
20 certificate, all of the following requirements:

21 (i) The facility is located in this state.

22 (ii) The facility is composed of 1 or more buildings.

23 (iii) The facility is primarily designed and intended for
24 housing, and does house, data center equipment to centralize the
25 storage and processing of the qualified entity's or any of its
26 affiliates' own data, and is developed, owned, and operated by a
27 qualified entity or any of its affiliates for the qualified
28 entity's or any of its affiliates' exclusive use. As used in this
29 subparagraph, "exclusive use" includes use by contractors of the



1 qualified entity or its affiliates for or on behalf of the
2 qualified entity or its affiliates.

3 (iv) The aggregate capital investment in the facility described
4 in this subdivision made by the qualified entity, and any of its
5 affiliates that will develop, own, and operate the facility, is not
6 less than \$250,000,000.00.

7 (v) The qualified entity and any of its affiliates, in the
8 aggregate, create and maintain a minimum of 30 qualified new jobs
9 in this state with a median annual wage that is equal to 150% or
10 more of the prosperity region median wage through December 31, 2046
11 or, for a facility that is located on the property included in a
12 brownfield plan under the brownfield redevelopment financing act,
13 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once
14 an industrial site used primarily as a power plant to generate
15 electricity for sale, through December 31, 2061.

16 (vi) All qualified new jobs are held by individuals who reside
17 in this state.

18 (vii) Not less than 50% of the qualified new jobs are held by
19 individuals with an associate's, bachelor's, or advanced degree in
20 the field of science, technology, engineering, or mathematics, or
21 individuals licensed, registered, or certified under the skilled
22 trades regulation act, 2016 PA 407, MCL 339.5101 to 339.6133. As
23 used in this subdivision:

24 (A) "Aggregate capital investment" means capital investment
25 made and maintained in the facility to the extent that investment
26 results in an increase in the total capital investment that the
27 qualified entity and its affiliates, in the aggregate, maintain in
28 this state when compared to the total capital investment that the
29 applicant and its affiliates, in the aggregate, maintained in this



1 state before issuance of the certificate, as determined and
2 verified by the Michigan strategic fund.

3 (B) "Prosperity region" means each of the 10 prosperity
4 regions identified by the department of technology, management, and
5 budget on August 25, 2017.

6 (C) "Prosperity region median wage" means the median annual
7 wage for the prosperity region where the facility is located based
8 on the most recent data made available by the Michigan bureau of
9 labor market information and strategic initiatives.

10 (D) "Qualified new job" means a full-time job created by the
11 qualified entity or its affiliates at the facility that is in
12 excess of the number of full-time jobs that the applicant and its
13 affiliates maintained in this state before issuance of the
14 certificate, as determined and verified by the Michigan strategic
15 fund.

16 (f) Enterprise data center does not include a facility that
17 the Michigan strategic fund determines no longer meets, or is no
18 longer expected to meet within the time frame set forth in the
19 certificate, the requirements in subdivision (e).

20 (g) "Michigan economic development corporation" means that
21 term as defined in section 4 of the Michigan strategic fund act,
22 1984 PA 270, MCL 125.2004.

23 (h) "Michigan strategic fund" means the Michigan strategic
24 fund as described in the Michigan strategic fund act, 1984 PA 270,
25 MCL 125.2001 to 125.2094.

26 (i) ~~(d)~~—"Qualified data center" means a facility composed of 1
27 or more buildings located in this state and the facility is owned
28 or operated by an entity engaged at that facility in operating,
29 managing, or maintaining a group of networked computers or



1 networked facilities for the purpose of centralizing, or allowing 1
2 or more colocated businesses to centralize, the storage,
3 processing, management, or dissemination of data of 1 or more other
4 persons who is not an affiliate of the owner or operator of a
5 qualified data center or of a colocated business and the entity
6 receives 75% or more of its revenue from colocated businesses that
7 are not an affiliate of the owner or operator of the qualified data
8 center.

9 **(j) "Qualified entity" means an applicant to whom a**
10 **certificate is issued for a particular enterprise data center**
11 **project under subsection (6) (a) and who is in compliance with the**
12 **requirements of subsections (5) and (6).**

13 Enacting section 1. This amendatory act takes effect 90 days
14 after the date it is enacted into law.

