

**SUBSTITUTE FOR
HOUSE BILL NO. 5306**

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, the tax under this act
3 does not apply to the storage, use, or consumption of data center
4 equipment sold to the owner or operator of a qualified data center
5 or a colocated business for assembly, use, or consumption in the
6 operations of the qualified data center or data center equipment
7 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



or made a structural part of a qualified data center.

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

(3) The exemption under ~~this section only~~ **subsection (1)** continues to apply after January 1, 2026, **only** if the numbers gathered by the local economic development corporations are certified and reported to the ~~department of talent and economic development~~ **Michigan strategic fund** and subsequently forwarded to the department and demonstrate that the qualified data centers, the colocated businesses, and the contractors of the qualified data 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. Within 120 days after
12 receiving a complete and correct application, the Michigan
13 strategic fund shall review the application and either issue a
14 certificate to the applicant or provide written reasons for its
15 denial. The certificate must specify a time frame for a facility to
16 satisfy each of the criteria for an enterprise data center under
17 subsection (8)(e). The Michigan strategic fund shall provide the
18 department with a copy of each certificate issued under this
19 section.

20 (b) The qualified entity of a facility for which a certificate
21 has been issued shall report to the Michigan strategic fund all
22 information required by the Michigan strategic fund regarding
23 purchases for which an exemption is claimed under subsection (4)
24 and such other information as may be required by the Michigan
25 strategic fund to determine whether the facility continues to
26 qualify as an enterprise data center. The report required by this
27 subdivision is subject to audit and must be made on an annual basis
28 following issuance of the certificate. The report required by this
29 subdivision must not include any remittance for tax and does not



1 constitute a return or otherwise alleviate any obligations under
2 section 6.

3 (c) The Michigan strategic fund shall revoke a certificate
4 issued under this section if it determines a facility no longer
5 meets the definition of an enterprise data center. If the Michigan
6 strategic fund determines revocation is appropriate, it shall
7 provide written notice to the qualified entity and the department
8 not less than 60 days, but not more than 180 days, before
9 revocation, notifying the qualified entity of its preliminary
10 determination to revoke the certificate and providing the qualified
11 entity an opportunity to demonstrate, within the time period
12 specified in the notice, that the facility continues to meet the
13 definition of an enterprise data center. Following the expiration
14 of the time period specified in the notice, if the Michigan
15 strategic fund determines that the facility does not meet the
16 definition of an enterprise data center, the Michigan strategic
17 fund shall revoke the certificate. If revocation occurs not more
18 than 10 years after issuance of the certificate, the former
19 qualified entity shall pay to the department an amount equal to the
20 entire amount of the tax exemptions stemming from the certificate
21 that have been received under subsection (4) by all persons, plus
22 interest as specified in section 23(2) of 1941 PA 122, MCL 205.23,
23 calculated from January 1 of the year the exemption was received
24 until the amount is paid to the department under this subdivision.
25 If revocation occurs more than 10 years after issuance of the
26 certificate, the former qualified entity shall pay to the
27 department an amount equal to the entire amount of the tax
28 exemptions stemming from the certificate that have been received
29 under subsection (4) by all persons, plus interest as specified in



section 23(2) of 1941 PA 122, MCL 205.23, calculated from January 1 of the year the exemption was received until the amount is paid to the department under this subdivision, unless the Michigan strategic fund determines, pursuant to published guidelines, that a lesser amount, but not less than an amount equal to 50% of the entire amount of the tax exemptions stemming from the certificate that have been received by all persons under subsection (4), is appropriate after evaluating the circumstances. During the time period specified in the notice described in this subdivision, all persons must cease claiming a tax exemption stemming from the certificate under subsection (4). If a certificate is revoked, the Michigan strategic fund shall notify the department within 5 days after the revocation.

(7) A person engaged in the business of constructing, altering, repairing, or improving real estate for others that has claimed an exemption under subsection (4)(b) for a particular facility must submit an annual summary report to the qualified entity or former qualified entity to which a certificate for that facility was issued on or before January 1 of each year that provides, at a minimum, information sufficient to identify the person that made the purchases and the purchase price of all items purchased each month of that year. Such a person must also maintain all invoices, bills of sale, or similar documents for all claimed exempt purchases that indicate the date of purchase, the items purchased, and the purchase price of the property that is identified in the summary report for 4 years after the date of the purchase.

(8) ~~(4)~~—As used in this section:

(a) "Affiliate" means a person that directly, or indirectly



1 through 1 or more intermediaries, controls, is controlled by, or is
2 under common control with a specified person.

3 **(b) "Certificate" means the document issued by the Michigan**
4 **strategic fund to an applicant under subsection (6)(a) that**
5 **certifies or otherwise establishes that the facility developed,**
6 **owned, and operated by the applicant or an affiliate of the**
7 **applicant, or to be developed, owned, and operated by the applicant**
8 **or an affiliate of the applicant, and identified in that document**
9 **qualifies as an enterprise data center under this section.**

10 **(c) ~~(b)~~**"Colocated business" means a person that has entered
11 into a contract with the owner or operator of a qualified data
12 center to use or deploy data center equipment physically located
13 within the qualified data center for a period of 1 or more years.

14 **(d) ~~(c)~~**"Data center equipment" means only computers, servers,
15 routers, switches, peripheral computer devices, racks, shelving,
16 cabling, wiring, storage batteries, back-up generators,
17 uninterrupted power supply units, environmental control equipment,
18 other redundant power supply equipment, and prewritten computer
19 software used in operating, managing, or maintaining the qualified
20 data center **or enterprise data center** or the business of the
21 qualified data center or a colocated business. Data center
22 equipment also includes any construction materials used or
23 assembled **for the construction or modification of an enterprise**
24 **data center or**, under the qualified data center's proprietary
25 method, for the construction or modification of a qualified data
26 center, including, but not limited to, building materials,
27 infrastructure, machinery, wiring, cabling, devices, tools, and
28 equipment that would otherwise be considered a fixture or related
29 equipment. Data center equipment does not include any equipment



owned by a third party that is used to supply the qualified data center's primary power.

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

(i) The facility is located in this state.

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

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

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

(v) The qualified entity and any of its affiliates, in the aggregate, create and maintain a total of 30 or more qualified new jobs through December 31, 2046 or, for a facility that is located on the property included in a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, through December 31, 2061, with wage rates exceeding 120% of the county average wage.



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

3 (vii) Fifty percent of the qualified new jobs are composed of
4 individuals with an associate's, bachelor's, or advanced degree in
5 the field of science, technology, engineering, or mathematics, or
6 individuals licensed, registered, or certified under the skilled
7 trades regulation act, 2016 PA 407, MCL 339.5101 to 339.6133. As
8 used in this subdivision:

9 (A) "Aggregate capital investment" means capital investment
10 made and maintained in the facility to the extent that investment
11 results in an increase in the total capital investment that the
12 qualified entity and its affiliates, in the aggregate, maintain in
13 this state when compared to the total capital investment that the
14 applicant and its affiliates, in the aggregate, maintained in this
15 state before issuance of the certificate, as determined and
16 verified by the Michigan strategic fund.

17 (B) "County average wage" means the average annual wage for
18 the county where the facility is located based on the most recent
19 data made available by the Michigan bureau of labor market
20 information and strategic initiatives. If the facility is located
21 in more than 1 county, the county average wage shall be based
22 solely on the average annual wage for the county with the highest
23 average annual wage, from among the applicable counties, based on
24 the most recent data made available by the Michigan bureau of labor
25 market information and strategic initiatives.

26 (C) "Qualified new job" means a full-time job created by the
27 qualified entity or its affiliates at the facility that is in
28 excess of the number of full-time jobs that the applicant and its
29 affiliates maintained at the project location before issuance of



1 the certificate, as determined and verified by the Michigan
2 strategic fund.

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

7 (g) "Michigan strategic fund" means the Michigan strategic
8 fund as described in the Michigan strategic fund act, 1984 PA 270,
9 MCL 125.2001 to 125.2094.

10 (h) ~~(d)~~ "Qualified data center" means a facility composed of 1
11 or more buildings located in this state and the facility is owned
12 or operated by an entity engaged at that facility in operating,
13 managing, or maintaining a group of networked computers or
14 networked facilities for the purpose of centralizing, or allowing 1
15 or more colocated businesses to centralize, the storage,
16 processing, management, or dissemination of data of 1 or more other
17 persons who is not an affiliate of the owner or operator of a
18 qualified data center or of a colocated business and the entity
19 receives 75% or more of its revenue from colocated businesses that
20 are not an affiliate of the owner or operator of the qualified data
21 center.

22 (i) "Qualified entity" means an applicant to whom a
23 certificate is issued for a particular enterprise data center
24 project under subsection (6) (a) and who is in compliance with the
25 requirements of subsections (5) and (6).

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

