SENATE BILL NO. 237

March 23, 2023, Introduced by Senators HERTEL, BELLINO, VICTORY, WOJNO, KLINEFELT and SANTANA and referred to the Committee on Finance, Insurance, and Consumer Protection.

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:

Sec. 4cc. (1) Subject to subsections (2) and (3), beginning January 1, 2016 through December 31, 2035, 2050, the tax under this act does not apply to the storage, use, or consumption of data center equipment sold to the owner or operator of a qualified data center or a colocated business for assembly, use, or consumption in the operations of the qualified data center or data center
equipment sold or provided to a person engaged in the business of constructing, altering, repairing, or improving real estate for 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
state at least 1,000 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, 2026
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.

(4) Subject to subsection (5), beginning on the effective date
of the amendatory act that added this subsection through December
31, 2050 or, with respect to an enterprise data center subject to a
certificate 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, 2065, the storage, use,
or consumption of data center equipment sold to either of the
following is exempt from the tax imposed by this act:

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

(b) A person engaged in the business of constructing,
altering, repairing, or improving real estate for others to the
extent the data center equipment is to be affixed to or made a
structural part of an enterprise data center subject to a
(5) In order for a purchaser to claim an exemption under subsection (4), at the time the data center equipment is sold to the purchaser, the qualified entity must have received a certificate for that facility which is in good standing.

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

(a) A person seeking a certificate for an enterprise data center must apply to the Michigan strategic fund on a form and in the manner prescribed by the Michigan strategic fund. The application must include an affirmation signed by the applicant stating that it expects the facility to satisfy each of the criteria for an enterprise data center under subsection (8)(e) and the anticipated time frame for doing so. Within 120 days after receiving a complete and correct application, the Michigan strategic fund shall review the application and either issue a certificate to the applicant or provide written reasons for its denial. The certificate must specify a time frame for a facility to satisfy each of the criteria for an enterprise data center under subsection (8)(e). The Michigan strategic fund shall provide the department with a copy of each certificate issued under this section.

(b) The qualified entity of a facility for which a certificate has been issued shall report to the Michigan strategic fund all information required by the Michigan strategic fund regarding purchases for which an exemption is claimed under subsection (4) and such other information as may be required by the Michigan strategic fund to determine whether the facility continues to qualify as an enterprise data center. The report required by this
subdivision is subject to audit and must be made on an annual basis following issuance of the certificate. The report required by this subdivision must not include any remittance for tax and does not constitute a return or otherwise alleviate any obligations under section 6.

(c) The Michigan strategic fund shall revoke a certificate issued under this section if it determines a facility no longer meets the definition of an enterprise data center. If the Michigan strategic fund determines revocation is appropriate, it shall provide written notice to the qualified entity and the department not less than 60 days, but not more than 180 days, before revocation, notifying the qualified entity of its preliminary determination to revoke the certificate and providing the qualified entity an opportunity to demonstrate, within the time period specified in the notice, that the facility continues to meet the definition of an enterprise data center. Following the expiration of the time period specified in the notice, if the Michigan strategic fund determines that the facility does not meet the definition of an enterprise data center, the Michigan strategic fund shall revoke the certificate. If revocation occurs not more than 10 years after issuance of the certificate, the former qualified entity shall pay to the department an amount equal to the entire amount of the tax exemptions stemming from the certificate that have been received 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. If revocation occurs more than 10 years after issuance of the certificate, the former qualified entity shall pay to the
department an amount equal to the entire amount of the tax
exemptions stemming from the certificate that have been received
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 through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

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

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

(d) (c)—"Data center equipment" means only computers, servers, routers, switches, peripheral computer devices, racks, shelving, cabling, wiring, storage batteries, back-up generators, uninterrupted power supply units, environmental control equipment, other redundant power supply equipment, and prewritten computer software used in operating, managing, or maintaining the qualified data center or enterpris data center or the business of the qualified data center or a colocated business. Data center equipment also includes any construction materials used or assembled for the construction or modification of an enterprise data center or, under the qualified data center's proprietary method, for the construction or modification of a qualified data center, including, but not limited to, building materials,
infrastructure, machinery, wiring, cabling, devices, tools, and
equipment that would otherwise be considered a fixture or related
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, 2050 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, 2065, with wage rates exceeding 120% of the county average wage.

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

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

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

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

(C) "Qualified new job" means a full-time job created by the
qualified entity or its affiliates at the facility that is in excess of the number of full-time jobs that the applicant and its affiliates maintained at the project location before issuance of the certificate, as determined and verified by the Michigan strategic fund.

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

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

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

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

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