

Arizona – Exemptions for qualified data centers

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In brief

Effective September 1, 2013, Arizona authorizes transaction privilege (sales) tax, use tax, and municipal tax exemptions for the owner, operator, and qualified tenants of a certified computer data center. The exemption extends for either 10 or 20 years (depending on the center), and applies to all qualified computer data center equipment purchased for use in the center. Centers may be certified through December 31, 2023. [[H.B. 2009](#), enacted June 17, 2013]

In detail

Transaction privilege tax, use tax, and municipal tax exemption

During the ‘qualification period,’ an owner, operator, or qualified tenant is exempt from the retail transaction privilege tax, use tax, and municipal tax for purchases of computer data center equipment (defined below) for use in a certified computer data center. A prime contracting transaction privilege tax exemption also applies for certified computer data center construction.

The ‘qualification period’ generally runs for 10 years. The qualification period extends to 20 years for a ‘sustainable redevelopment project,’ which is defined as a center in a facility that: (1) was at least 50% vacant for six of the last 12 months prior to acquisition or lease; or

(2) satisfies certain energy efficiency standards.

A ‘computer data center’ is defined as all or part of a facility “that is or will be predominantly used to house working servers and that may have uninterruptible energy supply or generator backup power, or both, cooling systems, towers, and other temperature control infrastructure.”

To qualify for the exemption, the owner, operator, or qualified tenant must present to the retailer at the time of purchase its qualification certificate issued by the Arizona Commerce Authority.

Certified computer data center

A ‘computer data center’ must meet one of the following requirements, taking into account the combined investments of the owner,

operator, or qualified tenants of the center:

- **New Centers.** Within five years of certification, the center creates at least \$25 million of new investment, including land, buildings, modular data centers, and computer data center equipment. The investment requirement is increased to \$50 million if the center is located in a county with a population of more than 800,000 persons. Currently the counties that include Phoenix (Maricopa County) and Tucson (Pima County) have populations greater than 800,000.
- **Existing Centers.** During the 72 months before September 1, 2013, the center created an investment of at least \$250 million,

including land, buildings, modular data centers, and computer data center equipment.

A data center does not qualify if it: (1) generates electricity for resale purposes; or (2) generates, provides, or sells electricity outside of the computer data center.

A 'modular data center' means a portable system of information technology, climate control, energy supply and energy distribution and machinery, equipment and related tangible personal property contained in an intermodal freight container or similar structure.

A 'qualified tenant' is an entity that contracts with the owner or operator of a certified computer data center. The tenant must be contracted to use or occupy all or part of the center for at least 500 kilowatts per month for a period of two or more years.

Application to the Arizona Commerce Authority

To qualify for the tax exemptions, the owner or operator of a data center must submit an application to the Arizona Commerce Authority (Authority). The application must include:

- For **New Centers**, the anticipated investment associated with the center and whether the center is anticipated to qualify as a sustainable redevelopment project.
- For **Existing Centers**, an affirmation by the owner or operator that the center has satisfied the Existing Center certification requirements and whether the center qualifies as a sustainable redevelopment project.

The Authority must either approve or deny an owner or operator's application with 60 days of receipt.

Failure to approve or deny within 60 days constitutes an approved certification.

The Authority may issue certificates until December 31, 2023.

Reporting requirements for New Centers

Within five years of certification, the center's owner or operator must report to the Authority whether the center has satisfied the investment requirements.

The owner or operator must also provide the Authority and the Department with a list of qualified tenants (including the commencement and expiration dates for each qualified tenant) and must notify the Authority and Department of any changes within 30 days.

Qualified computer data equipment

'Computer data equipment' means equipment used to outfit, operate, or benefit a computer data center and component parts, installations, refreshments, replacements, and upgrades, including:

- all equipment necessary for the transformation, generation, distribution, or management of electricity that is required to operate computer server equipment, including generators, uninterruptible energy, supplies, conduit, gaseous fuel piping, cabling, duct banks, switches, switchboards, batteries, and testing equipment
- all equipment necessary to cool and maintain a controlled environment for the operation of the computer server and other components of the computer data center, including mechanical equipment, refrigerant piping,

gaseous fuel piping, adiabatic and free cooling systems, cooling towers, water softeners, air handling units, indoor direct exchange units, fans, ducting, and filters

- all water conservation systems, including facilities or mechanisms that are designed to collect, conserve, and reuse water
- all enabling software, computer server equipment, chassis, networking equipment, switches, racks, cabling, trays, and conduit
- all monitoring equipment and security systems
- modular data centers and preassembled components of any other computer data equipment item, including components used in the manufacturing of modular data centers
- other tangible personal property that is essential to the operations of a computer data center.

Other considerations

Other considerations include:

- The Department may revoke the certification of a New Center and recapture all or part of the tax relief provided if the Department determines that: (1) the New Center requirements have not been satisfied; or (2) the electricity-related disqualifying factors apply.
- A single facility may be separated into one of more qualified data centers if each center individually meets the requirements.
- A data center remains certified regardless of a direct or indirect future transfer, sale, or disposition of the data center.

The takeaway

With this law, Arizona joins several other states that provide a sales/use tax exemption for qualified in-state data centers. In order to qualify, a data center must apply with Arizona Commerce Authority to receive the exemption from state and local sales

and use taxes on purchases of computer data center equipment for 10 to 20 years. The incentive requires varying levels of data center investment, depending on the situation, in order to qualify and applies to both existing and new data center operations. Equipment essential to the operations of a

computer data center, including mechanical equipment and equipment necessary to generate power, qualify for the exemption. Importantly, the legislation does not address the taxability of data center revenue streams.

Let's talk

If you have questions regarding Arizona's data center exemption, please contact:

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