

SECOND REGULAR SESSION

# SENATE BILL NO. 868

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Read 1st time January 28, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4740S.01I

## AN ACT

To amend chapter 144, RSMo, by adding thereto one new section relating to tax incentives for data storage and server farm facilities.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 144, RSMo, is amended by adding thereto one new  
2 section, to be known as section 144.810, to read as follows:

**144.810. 1. As used in this section, unless the context clearly  
2 indicates otherwise, the following terms shall mean:**

3 **(1) "Commencement of commercial operations", shall be deemed  
4 to occur during the first calendar year for which the data storage  
5 center or server farm facility is first available for use by the operating  
6 taxpayer, or first capable of being used by the operating taxpayer, as  
7 a data storage center or server farm facility;**

8 **(2) "Constructing taxpayer", where more than one taxpayer is  
9 responsible for a project, a taxpayer responsible for the purchase or  
10 construction of the facility, as opposed to a taxpayer responsible for the  
11 equipping and ongoing operations of the facility;**

12 **(3) "Data storage center" or "server farm facility" or "facility", a  
13 facility purchased, constructed, extended, improved or operating  
14 pursuant to this section, provided that such business facility is engaged  
15 in:**

16 **(a) Data processing, hosting, and related services (NAICS  
17 518210); or**

18 **(b) Internet publishing and broadcasting and web search portals  
19 (NAICS 519130), at the business facility;**

20 **(4) "Existing facility", a data storage center or server farm  
21 facility in this state as it existed prior to August 28, 2010, as determined**

22 by the department;

23 (5) "Expanding facility" or "expanding data storage center or  
24 server farm facility", an existing facility or replacement facility that  
25 expands its operations in this state on or after August 28, 2010, and has  
26 net new investment related to the expansion of operations in this state  
27 of at least one million dollars during a period of up to twelve  
28 consecutive months. An expanding facility shall continue to be an  
29 expanding facility regardless of a subsequent change in or addition of  
30 operating taxpayers or constructing taxpayers;

31 (6) "Expanding facility project" or "expanding data storage center  
32 or server farm facility project", the purchase, construction, extension,  
33 improvement equipping and operation of an expanding facility;

34 (7) "NAICS", the 2007 edition of the North American Industry  
35 Classification System as prepared by the Executive Office of the  
36 President, Office of Management and Budget. Any NAICS sector,  
37 subsector, industry group or industry identified in this section shall  
38 include its corresponding classification in previous and subsequent  
39 federal industry classification systems;

40 (8) "New facility" or "new data storage center or server farm  
41 facility", a facility in this state meeting the following requirements:

42 (a) The facility is acquired by, or leased to, an operating  
43 taxpayer on or after August 28, 2010. A facility shall be deemed to have  
44 been acquired by, or leased to, an operating taxpayer on or after  
45 August 28, 2010, if the transfer of title to an operating taxpayer, the  
46 transfer of possession pursuant to a binding contract to transfer title  
47 to an operating taxpayer, or the commencement of the term of the lease  
48 to an operating taxpayer occurs on or after August 28, 2010, or, if the  
49 facility is constructed, erected or installed by or on behalf of an  
50 operating taxpayer, such construction, erection or installation is  
51 commenced on or after August 28, 2010;

52 (b) If such facility was acquired by an operating taxpayer from  
53 another person or persons on or after August 28, 2010, and such facility  
54 was employed prior to August 28, 2010, by any other person or persons  
55 in the operation of a data storage center or server farm facility, the  
56 facility shall not be considered a new facility;

57 (c) Such facility is not a replacement facility, as defined in  
58 subdivision (12) of this section;

59           **(d) The new facility project investment is at least five million**  
60 **dollars during a period of up to thirty-six consecutive months. Where**  
61 **more than one taxpayer is responsible for a project, the investment**  
62 **requirement may be met by an operating taxpayer, a constructing**  
63 **taxpayer or a combination of constructing taxpayers and operating**  
64 **taxpayers; and**

65           **(e) A new facility shall continue to be a new facility regardless**  
66 **of a subsequent change in or addition of operating taxpayers or**  
67 **constructing taxpayers;**

68           **(9) "New data storage center or server farm facility project", or**  
69 **"new facility project" the purchase, construction, extension,**  
70 **improvement equipping and operation of a new facility;**

71           **(10) "Operating taxpayer", where more than one taxpayer is**  
72 **responsible for a project, a taxpayer responsible for the equipping and**  
73 **ongoing operations of the facility, as opposed to a taxpayer responsible**  
74 **for the purchasing or construction of the facility;**

75           **(11) "Project taxpayers", each constructing taxpayer and each**  
76 **operating taxpayer for a data storage center or server farm facility**  
77 **project;**

78           **(12) "Replacement facility" or "replacement data storage center**  
79 **or server farm facility", a facility in this state otherwise described in**  
80 **subdivision (8) of this section, but which replaces another facility**  
81 **located within the state, which the taxpayer or a related taxpayer**  
82 **previously operated but discontinued operating within one year prior**  
83 **to the commencement of commercial operations at the new facility;**

84           **(13) "Taxpayer", the purchaser of tangible personal property or**  
85 **a service that is subject to state or local sales or use tax and from**  
86 **whom state or local sales or use tax is owed. Taxpayer shall not mean**  
87 **the seller charged by law with collecting the sales tax from the**  
88 **purchaser.**

89           **2. Beginning August 28, 2010, in addition to the exemptions**  
90 **granted under chapter 144, there shall also be specifically exempted**  
91 **from state and local sales and use taxes defined, levied, or calculated**  
92 **under section 32.085, sections 144.010 to 144.525, sections 144.600 to**  
93 **144.761, or section 238.235:**

94           **(1) All electrical energy, gas, water, and other utilities including**  
95 **telecommunication services used in a new data storage center or server**

96 farm facility;

97 (2) All machinery, equipment, and computers used in any new  
98 data storage center or server farm facility; and

99 (3) All sales at retail of tangible personal property and materials  
100 for the purpose of constructing, repairing, or remodeling any new data  
101 storage center or server farm facility.

102 3. Any data storage center and server farm facility project  
103 seeking a tax exemption under subsection 2 of this section shall submit  
104 a project plan to the department of economic development, including  
105 identifying each known constructing taxpayer and each known  
106 operating taxpayer for the project. The department of economic  
107 development shall determine whether the project is eligible for the  
108 exemption under subsection 2 of this section conditional upon  
109 subsequent verification by the department that the project meets the  
110 requirement in paragraph (d) of subdivision (8) of subsection 1 of this  
111 section of at least five million dollars of new facility investment over  
112 a time period not to exceed thirty-six consecutive months. The  
113 department of economic development shall convey such conditional  
114 approval to the department of revenue and the identified project  
115 taxpayers. After a conditionally approved new facility project has met  
116 the investment amount, the project taxpayers shall provide proof of  
117 such investment to the department of economic development. Upon  
118 verification of such proof, the department of economic development  
119 shall certify the project to the department of revenue as being eligible  
120 for the exemption dating retroactively to the first day of the thirty six  
121 month period or the first day of the new investment in the event the  
122 investment is met in less than thirty six months. The department of  
123 revenue, upon receipt of adequate proof of the amount of sales taxes  
124 paid since the first day of the thirty six month period, or the first day  
125 of the new investment in the event the investment is met in less than  
126 thirty six months, shall issue a refund of sales taxes paid as set forth  
127 in this section to each operating taxpayer and each constructing  
128 taxpayer and issue a certificate of exemption to each new project  
129 taxpayer for ongoing exemptions under subdivisions (1), (2), and (3) of  
130 subsection 2 of this section.

131 4. Beginning August 28, 2010, in addition to the exemptions  
132 granted under chapter 144, there shall also be specifically exempted

133 from state and local sales and use taxes defined, levied, or calculated  
134 under section 32.085, sections 144.010 to 144.525, sections 144.600 to  
135 144.761, or section 238.235:

136 (1) All electrical energy, gas, water, and other utilities including  
137 telecommunication services used in an expanding data storage center  
138 or server farm facility which, on an annual basis, exceeds the amount  
139 of electrical energy, gas, water, and other utilities including  
140 telecommunication services used in the existing facility or the replaced  
141 facility prior to the expansion. "Amount" shall be measured in kilowatt  
142 hours, gallons, cubic feet or other measures applicable to a utility  
143 service as opposed to in dollars, to account for increases in rates;

144 (2) All machinery, equipment, and computers used in any new  
145 data storage center or server farm facility, the cost of which, on an  
146 annual basis, exceeds the average of the previous three years'  
147 expenditures on machinery, equipment, and computers at the existing  
148 facility or the replaced facility prior to the expansion. Existing  
149 facilities or replaced facilities in existence for less than three years  
150 shall have the average expenditures calculated based upon the  
151 applicable time of existence; and

152 (3) All sales at retail of the tangible personal property and  
153 materials for the purpose of constructing, repairing, or remodeling any  
154 expanding data storage center or server farm facility.

155 5. Any data storage center and server farm facility project  
156 seeking a tax exemption under subsection 4 of this section shall submit  
157 an expanding project plan to the department of economic development,  
158 including identifying each known constructing taxpayer and each  
159 known operating taxpayer for the project. The project applicants shall  
160 also provide proof satisfactory to the department of economic  
161 development that the facility is an expanding facility and has net new  
162 investment related to the expansion of operations in this state of at  
163 least one million dollars during a time period not to exceed twelve  
164 consecutive months. Upon verification of such proof, the department  
165 of economic development shall certify the project to the department of  
166 revenue as being eligible for the exemption. The department of  
167 revenue shall issue a certificate of exemption to each expanding project  
168 taxpayer for ongoing exemptions under subdivisions (1), (2) and (3) of  
169 subsection 4 of this section.

170           **6. The sales tax exemptions in subsections 2 and 4 of this section**  
171 **shall be tied to the new or expanding facility project. A certificate of**  
172 **exemption in the hands of a taxpayer that is no longer an operating or**  
173 **constructing taxpayer of the new or expanding facility project shall be**  
174 **invalid as of the date the taxpayer was no longer an operating or**  
175 **constructing taxpayer of the new or expanding facility project. New**  
176 **certificates of exemption shall be issued to successor constructing**  
177 **taxpayers and operating taxpayers at such new or expanding facility**  
178 **projects. The right to the exemption by successor taxpayers shall exist**  
179 **without regard to subsequent levels of investment in the new or**  
180 **expanding facility by successor taxpayers.**

181           **7. The department of economic development and the department**  
182 **of revenue shall cooperate in conducting random audits to make**  
183 **certain the intent of this section is followed.**

184           **8. The department of economic development and the department**  
185 **of revenue shall jointly prescribe such rules and regulations necessary**  
186 **to carry out the provisions of this section. Any rule or portion of a**  
187 **rule, as that term is defined in section 536.010, that is created under**  
188 **the authority delegated in this section shall become effective only if it**  
189 **complies with and is subject to all of the provisions of chapter 536 and,**  
190 **if applicable, section 536.028. This section and chapter 536 are**  
191 **nonseverable and if any of the powers vested with the general assembly**  
192 **pursuant to chapter 536 to review, to delay the effective date, or to**  
193 **disapprove and annul a rule are subsequently held unconstitutional,**  
194 **then the grant of rulemaking authority and any rule proposed or**  
195 **adopted after August 28, 2010, shall be invalid and void.**

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