

FIRST REGULAR SESSION

# SENATE BILL NO. 217

96TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS RICHARD AND SCHMITT.

Read 1st time February 7, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1218S.011

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## AN ACT

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

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*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 is first available for use by the operating taxpayer, or first  
6 capable of being used by the operating taxpayer, as a data storage  
7 center;

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 "facility", a facility purchased,  
13 constructed, extended, improved, or operating pursuant to this section,  
14 provided that such business facility is engaged in:

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

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

19 (4) "Existing facility", a data storage center in this state as it  
20 existed prior to August 28, 2011, as determined by the department;

21 (5) "Expanding facility" or "expanding data storage center", an

22 existing facility or replacement facility that expands its operations in  
23 this state on or after August 28, 2011, and has net new investment  
24 related to the expansion of operations in this state of at least one  
25 million dollars during a period of up to twelve consecutive months. An  
26 expanding facility shall continue to be an expanding facility regardless  
27 of a subsequent change in or addition of operating taxpayers or  
28 constructing taxpayers;

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

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

38 (8) "New facility" or "new data storage center", a facility in this  
39 state meeting the following requirements:

40 (a) The facility is acquired by, or leased to, an operating  
41 taxpayer on or after August 28, 2011. A facility shall be deemed to have  
42 been acquired by, or leased to, an operating taxpayer on or after  
43 August 28, 2011, if the transfer of title to an operating taxpayer, the  
44 transfer of possession pursuant to a binding contract to transfer title  
45 to an operating taxpayer, or the commencement of the term of the lease  
46 to an operating taxpayer occurs on or after August 28, 2011, or, if the  
47 facility is constructed, erected, or installed by or on behalf of an  
48 operating taxpayer, such construction, erection, or installation is  
49 commenced on or after August 28, 2011;

50 (b) If such facility was acquired by an operating taxpayer from  
51 another person or persons on or after August 28, 2011, and such facility  
52 was employed prior to August 28, 2011, by any other person or persons  
53 in the operation of a data storage center, the facility shall not be  
54 considered a new facility;

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

57 (d) The new facility project investment is at least five million  
58 dollars during a period of up to thirty-six consecutive months. Where

59 more than one taxpayer is responsible for a project, the investment  
60 requirement may be met by an operating taxpayer, a constructing  
61 taxpayer, or a combination of constructing taxpayers and operating  
62 taxpayers; and

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

66 (9) "New data storage center project" or "new facility project", the  
67 purchase, construction, extension, improvement equipping, and  
68 operation of a new facility;

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

73 (11) "Project taxpayers", each constructing taxpayer and each  
74 operating taxpayer for a data storage center project;

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

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

86 2. Beginning August 28, 2011, in addition to the exemptions  
87 granted under chapter 144, there shall also be specifically exempted  
88 from state and local sales and use taxes defined, levied, or calculated  
89 under section 32.085, sections 144.010 to 144.525, sections 144.600 to  
90 144.761, or section 238.235:

91 (1) All electrical energy, gas, water, and other utilities including  
92 telecommunication services used in a new data storage center;

93 (2) All machinery, equipment, and computers used in any new  
94 data storage center; and

95 (3) All sales at retail of tangible personal property and materials

96 for the purpose of constructing, repairing, or remodeling any new data  
97 storage center.

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

127           4. Beginning August 28, 2011, in addition to the exemptions  
128 granted under chapter 144, there shall also be specifically exempted  
129 from state and local sales and use taxes defined, levied, or calculated  
130 under section 32.085, sections 144.010 to 144.525, sections 144.600 to  
131 144.761, or section 238.235:

132           (1) All electrical energy, gas, water, and other utilities including

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

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

148 (3) All sales at retail of the tangible personal property and  
149 materials for the purpose of constructing, repairing, or remodeling any  
150 expanding data storage center.

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

165 6. The sales tax exemptions in subsections 2 and 4 of this section  
166 shall be tied to the new or expanding facility project. A certificate of  
167 exemption in the hands of a taxpayer that is no longer an operating or  
168 constructing taxpayer of the new or expanding facility project shall be  
169 invalid as of the date the taxpayer was no longer an operating or

170 constructing taxpayer of the new or expanding facility project. New  
171 certificates of exemption shall be issued to successor constructing  
172 taxpayers and operating taxpayers at such new or expanding facility  
173 projects. The right to the exemption by successor taxpayers shall exist  
174 without regard to subsequent levels of investment in the new or  
175 expanding facility by successor taxpayers.

176 7. The department of economic development and the department  
177 of revenue shall cooperate in conducting random audits to make  
178 certain the intent of this section is followed.

179 8. The department of economic development and the department  
180 of revenue shall jointly prescribe such rules and regulations necessary  
181 to carry out the provisions of this section. Any rule or portion of a  
182 rule, as that term is defined in section 536.010 that is created under the  
183 authority delegated in this section shall become effective only if it  
184 complies with and is subject to all of the provisions of chapter 536, and,  
185 if applicable, section 536.028. This section and chapter 536 are  
186 nonseverable and if any of the powers vested with the general assembly  
187 pursuant to chapter 536, to review, to delay the effective date, or to  
188 disapprove and annul a rule are subsequently held unconstitutional,  
189 then the grant of rulemaking authority and any rule proposed or  
190 adopted after August 28, 2011, shall be invalid and void.

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