



**Sales and Use Tax Division
North Carolina Department of Revenue
Post Office Box 25000
Raleigh, North Carolina 27640-0001
www.dornrc.com**

IMPORTANT NOTICE: QUALIFYING DATACENTER

N.C. Gen. Stat. § 105-164.13(55a) is effective January 1, 2016 and provides the sale at retail or the storage, use, or consumption in this State of “electricity for use at a qualifying datacenter and datacenter support equipment to be located and used at the qualifying datacenter” on or after January 1, 2016 is exempt from sales and use tax. For purposes of the exemption, “datacenter support equipment” is “property that is capitalized for tax purposes under the Code and is used for one of the following purposes:

- a. The provision of a service or function included in the business of an owner, user, or tenant of the datacenter.
- b. The generation, transformation, transmission, distribution, or management of electricity, including exterior substations, generators, transformers, unit substations, uninterruptible power supply systems, batteries, power distribution units, remote power panels, and other capital equipment for these purposes.
- c. HVAC and mechanical systems, including chillers, cooling towers, air handlers, pumps, and other capital equipment used for these purposes.
- d. Hardware and software for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and equipment.
- e. To provide related computer engineering or computer science research.”

Effective January 1, 2016, N.C. Gen. Stat. § 105-164.3(33c) defines “qualifying datacenter” as “[a] datacenter that satisfies each of the following conditions:

- a. The datacenter meets the wage standard and health insurance requirements of G.S. 143B-437.08A.
- b. The Secretary of Commerce has made a written determination that at least seventy-five million dollars (\$75,000,000) in private funds has been or will be invested by one or more owners, users, or tenants of the datacenter within five years of the date the owner, user, or tenant of the datacenter makes its first real or tangible property investment in the datacenter on or after January 1, 2012. Investments in real or tangible property in the datacenter made prior to January 1, 2012, may not be included in the investment required by this subdivision.”

Forfeiture

N.C. Gen. Stat. § 105-164.13(55a) states “[i]f the level of investment required by G.S. 105-164.3(33c) is not timely made, the exemption provided under this subdivision is forfeited. If the level of investment required by G.S.105-164.3(33c) is timely made but any specific datacenter support equipment is not located and used at the qualifying datacenter, the exemption provided for such datacenter support equipment under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(33c) is timely made but any portion of electricity is not used at the qualifying datacenter, the exemption provided for such electricity under this subdivision is forfeited. A taxpayer that forfeits an exemption under this subdivision is liable for all past taxes avoided as a result of the forfeited exemption, computed from the date the taxes would have been due if the exemption had not been allowed, plus interest at the rate established under G.S. 105-241.21. If the forfeiture is triggered

due to the lack of a timely investment required by G.S. 105-164.3(33c), interest is computed from the date the taxes would have been due if the exemption had not been allowed. For all other forfeitures, interest is computed from the time as of which the datacenter support equipment or electricity was put to a disqualifying use. The past taxes and interest are due 30 days after the date the exemption is forfeited. A taxpayer that fails to pay the past taxes and interest by the due date is subject to the provisions of G.S. 105-236.”

Assistance

General questions regarding this notice should be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free).

To the extent that there is any change in statute or regulation, or new case law subsequent to the date of this notice, the provisions in this important notice may be superseded or voided. To the extent that any provisions in any other notice, directive, technical bulletin, or published guidance regarding sales and use tax issued prior to the date of this notice conflicts with this important notice, the provisions contained in this important notice supersede.