

House Bill 696 (AS PASSED HOUSE AND SENATE)

By: Representatives Kelley of the 16th, Coomer of the 14th, Watson of the 172nd, Shaw of the 176th, Stephens of the 164th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to
2 exemptions from state sales and use taxes, so as to create an exemption for certain equipment
3 to be incorporated or used in high-technology data centers; to provide for conditions of
4 exemption; to provide for limitations and prohibitions; to provide for reporting; to provide
5 for definitions; to provide for rules and regulations; to provide for related matters; to provide
6 for an effective date, applicability, and automatic repeal; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from
11 state sales and use taxes, is amended by adding a new paragraph to read as follows:

12 “(68.1)(A) For the period commencing on July 1, 2018, and ending on
13 December 31, 2028, high-technology data center equipment to be incorporated or used
14 in a high-technology data center that meets the high-technology data center minimum
15 investment threshold and other conditions provided in this paragraph.

16 (B) Any person making a sale or lease of high-technology data center equipment shall
17 collect the tax imposed on such sale by this article unless the purchaser furnishes such
18 seller with a certificate issued by the commissioner certifying that such sale or lease is
19 exempted pursuant to this paragraph.

20 (C)(i) The commissioner shall not issue a certificate of exemption from sales and use
21 tax to a high-technology data center or high-technology data center customer as
22 provided in this paragraph unless the commissioner makes a determination that the
23 high-technology data center will more likely than not meet the high-technology data
24 center minimum investment threshold.

25 (ii) The commissioner may require any information necessary to determine if such
26 high-technology data center is in compliance with its investment budgeting plan to
27 meet the high-technology data center minimum investment threshold.

28 (iii)(I) Within 60 days after the end of the seventh year following its exemption
29 start date, a high-technology data center shall file a final report with the
30 commissioner listing the expenditures incurred that count toward its minimum
31 investment threshold, the number of new quality jobs created, and any other
32 information that the commissioner may reasonably require to determine whether the
33 high-technology data center has met the minimum investment threshold.

34 (II) If the commissioner determines that a high-technology data center failed to
35 meet its high-technology data center minimum investment threshold, such
36 high-technology data center shall be required to repay all taxes exempted or
37 refunded pursuant to its certificate of exemption issued pursuant to this paragraph
38 within 90 days after notification of such failure. Interest shall be due with such
39 repayment at the rate specified in Code Section 48-2-40 computed from the date
40 such taxes would have been due but for this exemption. Such repayment shall be
41 calculated notwithstanding otherwise applicable periods of limitation for assessment
42 of taxes under Code Section 48-2-49.

43 (iv)(I) As a condition precedent to the issuance of a certificate of exemption, the
44 commissioner, at his or her discretion, may require a good and valid bond with a
45 surety company authorized to do business in this state, in an amount fixed by the
46 commissioner not to exceed \$20 million. The commissioner shall consider past
47 performance and in-state investment when determining the value of the bond, if one
48 is required.

49 (II) The bond that may be required by this division shall be forfeited and paid to the
50 general fund in an amount representing all taxes and interest required to be repaid
51 pursuant to division (iii) of this subparagraph if the high-technology data center fails
52 to meet the high-technology data center minimum investment threshold prior to the
53 expiration of the seven-year period.

54 (v) The commissioner shall have the authority to revoke the certificate of exemption
55 at any time he or she believes that the high-technology data center is not likely to
56 meet its high-technology minimum investment threshold.

57 (vi) Each high-technology data center that has been issued a certificate of exemption
58 pursuant to this paragraph shall provide a list of high-technology data center
59 customers that are deploying high-technology data center equipment in its facility and
60 shall notify the commissioner within 30 days of any change to the list.

61 (D)(i) The commissioner shall require annual reporting by the high-technology data
62 center of the amount of taxes exempted under this paragraph, the number of new
63 quality jobs, and the total payroll resulting from construction, maintenance, and
64 operation in and on its facility during the preceding year.

65 (ii) The commissioner shall issue an annual report to the chairperson of the Senate
66 Finance Committee and the chairperson of the House Committee on Ways and Means
67 concerning the exemption allowed by this paragraph. Notwithstanding the
68 confidentiality provisions of Code Section 48-2-15, such report shall include, for the
69 prior calendar year for each high-technology data center issued a certificate of
70 exemption pursuant to this paragraph, the amount of tax exempted and the number of
71 new quality jobs created by each high-technology data center.

72 (E) The commissioner shall promulgate such rules and regulations as are necessary to
73 implement the provisions of this paragraph.

74 (F) A high-technology data center shall not be entitled to claim any credit authorized
75 under Code Sections 48-7-40 through 48-7-40.33 or Code Section 36-62-5.1 on its tax
76 return if it has received a certificate of exemption from the commissioner pursuant to
77 this paragraph. If a determination is made by the commissioner pursuant to division
78 (iii) of subparagraph (C) of this paragraph that the high-technology data center must
79 repay all taxes exempted or refunded pursuant to this paragraph, such high-technology
80 data center may file amended income tax returns claiming any credit to which it would
81 have been entitled under the foregoing Code sections but for having claimed the
82 exemption under this paragraph.

83 (G) As used in this paragraph, the term:

84 (i) 'Exemption start date' means the date on or after July 1, 2018, chosen by the
85 high-technology data center and indicated on its application filed on or after January
86 1, 2019, which begins the seven-year period during which the minimum investment
87 threshold must be met. A refund claim must be filed for taxes paid on purchases
88 qualifying for this exemption for any period on or after July 1, 2018, during which the
89 high-technology data center has not yet applied for and received its certificate of
90 exemption from the commissioner.

91 (ii) 'High-technology data center' means a facility, campus of facilities, or array of
92 interconnected facilities in this state that is developed to power, cool, secure, and
93 connect its own equipment or the computer equipment of high-technology data center
94 customers and that has an investment budget plan which meets the high-technology
95 data center minimum investment threshold.

96 (iii) 'High-technology data center customer' means a client, tenant, licensee, or end
 97 user of a high-technology data center that signs at least a 36 month contract for
 98 service with the high-technology data center.

99 (iv) 'High-technology data center equipment' means computer equipment as defined
 100 in paragraph (68) of this Code section of a high-technology data center or such
 101 equipment of a high-technology data center customer to be used or deployed in the
 102 high-technology data center; and the materials, components, machinery, hardware,
 103 software, or equipment, including but not limited to, emergency backup generators,
 104 air handling units, cooling towers, energy storage or energy efficiency technology,
 105 switches, power distribution units, switching gear, peripheral computer devices,
 106 routers, batteries, wiring, cabling, or conduit, which equipment or materials are used
 107 to:

108 (I) Create, manage, facilitate, or maintain the physical and digital environments for
 109 computer equipment;

110 (II) Protect the high-technology data center equipment from physical,
 111 environmental, or digital threats; or

112 (III) Generate or provide constant delivery of power, environmental conditioning,
 113 air cooling, or telecommunications services for the high-technology data center.

114 Such term shall not include real property as defined in Code Section 48-8-3.2. A
 115 high-technology data center may not count high-technology data center equipment
 116 that it purchases or that is purchased by the high-technology data center customer and
 117 subsequently leased to another party more than once for purposes of satisfying the
 118 high-technology data center minimum investment threshold.

119 (v) 'High-technology data center minimum investment threshold' means the creation
 120 of 20 new quality jobs and:

121 (I) For high-technology data centers located in a county in this state having a
 122 population greater than 50,000 according to the United States decennial census of
 123 2010 or any future such census, \$250 million in aggregate expenditures incurred
 124 over any consecutive seven-year period between July 1, 2018, and December 31,
 125 2028, on the design and construction of the high-technology data center and
 126 high-technology data center equipment to be used or incorporated in the
 127 high-technology data center;

128 (II) For high-technology data centers located in a county in this state having a
 129 population greater than 30,000 and less than 50,001 according to the United States
 130 decennial census of 2010 or any future such census, \$150 million in aggregate
 131 expenditures incurred over any consecutive seven-year period between July 1, 2018,
 132 and December 31, 2028, on the design and construction of the high-technology data

133 center and high-technology data center equipment to be used or incorporated in the
134 high-technology data center; and
135 (III) For high-technology data centers located in a county in this state having a
136 population less than 30,001 according to the United States decennial census of 2010
137 or any future such census, \$100 million in aggregate expenditures incurred over any
138 consecutive seven-year period between July 1, 2018, and December 31, 2028, on
139 the design and construction of the high-technology data center and high-technology
140 data center equipment to be used or incorporated in the high-technology data center.
141 (vi) 'New quality jobs' shall have the same meaning as provided in paragraph (2) of
142 subsection (a) of Code Section 48-7-40.17.
143 (H) This paragraph shall stand repealed by operation of law on January 1, 2029."

144 **SECTION 2.**

145 This Act shall become effective on January 1, 2019, and shall be applicable to transactions
146 occurring on or after July 1, 2018.

147 **SECTION 3.**

148 All laws and parts of laws in conflict with this Act are repealed.