

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 1171  
PROPOSED COMMITTEE SUBSTITUTE S1171-PCS75392-RB-79

Short Title: Keeping NC Competitive Act.

(Public)

Sponsors:

Referred to:

May 18, 2010

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY ELIGIBILITY FOR ECONOMIC INCENTIVE SALES AND USE  
3 TAX EXEMPTIONS AND REFUNDS AND FOR ELIGIBILITY FOR THE ONE  
4 PERCENT PRIVILEGE TAX ON DATACENTER MACHINERY AND EQUIPMENT.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 105-164.3(8e) reads as rewritten:

7 "(8e) Eligible Internet datacenter. – A datacenter that satisfies each of the  
8 following conditions:

- 9 a. The facility is used primarily or is to be used primarily by a business  
10 engaged in "~~Internet service providers and Web search portals~~"  
11 ~~industry 51811, as defined by NAICS.~~ software publishing included  
12 in industry 511210 of NAICS or an Internet activity included in  
13 industry 519130 of NAICS.
- 14 b. The facility is comprised of a structure or series of structures located  
15 or to be located on a single parcel of land or on contiguous parcels of  
16 land that are commonly owned or owned by affiliation with the  
17 operator of that facility.
- 18 c. The facility is located or to be located in a county that was  
19 designated, at the time of application for the written determination  
20 required under sub-subdivision d. of this subdivision, either an  
21 enterprise tier one, two, or three area or a development tier one or  
22 two area pursuant to G.S. 105-129.3 or G.S. 143B-437.08, regardless  
23 of any subsequent change in county enterprise or development tier  
24 status.
- 25 d. The Secretary of Commerce has made a written determination that at  
26 least two hundred fifty million dollars (\$250,000,000) in private  
27 funds has been or will be invested in real property or eligible  
28 business property, or a combination of both, at the facility within five  
29 years after the commencement of construction of the facility."

30 **SECTION 2.** G.S. 105-164.3(23a) reads as rewritten:

31 "(23a) NAICS. – ~~Defined in G.S. 105-129.81.~~ The North American Industry  
32 Classification System adopted by the United States Office of Management  
33 and Budget as of December 31, 2007."

34 **SECTION 3.** G.S. 105-164.13(55) reads as rewritten:



\* S 1 1 7 1 - P C S 7 5 3 9 2 - R B - 7 9 \*

"(55) Sales of electricity for use at an eligible Internet ~~data center~~datacenter and eligible business property to be located and used at an eligible Internet ~~data center~~datacenter. As used in this subdivision, "eligible business property" is property that is capitalized for tax purposes under the Code and is used either:

- a. For the provision of ~~Internet service or Web search portal services as contemplated by G.S. 105-164.3(8e)a.~~, a service included in the business of the primary user of the datacenter, including equipment cooling systems for managing the performance of the property.
- b. For the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.
- c. To provide related computer engineering or computer science research.

If the level of investment required by G.S. 105-164.3(8e)d. is not timely made, then the exemption provided under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any specific eligible business property is not located and used at an eligible Internet ~~data center~~datacenter, then the exemption provided for such eligible business property under this subdivision is forfeited. If the level of investment required by G.S. 105-164.3(8e)d. is timely made but any portion of the electricity is not used at an eligible Internet ~~data center~~datacenter, then 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(8e)d., then 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 eligible business property 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."

**SECTION 4.** G.S. 105-164.14(j)(3) is amended by adding the following new sub-subdivisions to read:

"(j) Certain Industrial Facilities. – The owner of an eligible facility is allowed an annual refund of sales and use taxes as provided in this subsection.

- ...
  - (3) Industries. – This subsection applies to the following industries:
    - ...
      - i. Paper-from-pulp manufacturing. – Paper-from-pulp manufacturing means an industry primarily engaged in manufacturing or converting paper, other than newsprint or uncoated groundwood paper, from pulp or pulp products, or in converting purchased sanitary paper stock or wadding into sanitary paper products.
      - ...
        - p. Turbine manufacturing. – Turbine manufacturing means an industry primarily engaged in manufacturing turbines or complete turbine generator set units, such as steam, hydraulic, gas, and wind. Turbine

1 manufacturing under this provision does not include the  
2 manufacturing of aircraft turbines."

3 **SECTION 5.** G.S. 105-187.50 reads as rewritten:

4 **"§ 105-187.50. Definitions.**

5 The definitions in G.S. 105-164.3 apply in this Article. ~~In addition, the following~~  
6 ~~definitions apply in this Article:~~

7 (1) ~~Repealed by Session Laws 2009-451, s. 27A.3(v), effective August 7, 2009.~~

8 (2) ~~Eligible datacenter. — A datacenter that satisfies each of the following~~  
9 ~~conditions:~~

10 a. ~~Repealed by Session Laws 2009-451, s. 27A.3(v), effective August~~  
11 ~~7, 2009.~~

12 b. ~~The Secretary of Commerce has made a written determination of the~~  
13 ~~following:~~

14 1. ~~For facilities that are located in a development tier one area at~~  
15 ~~the time of application for the written determination, that at~~  
16 ~~least one hundred fifty million dollars (\$150,000,000) in~~  
17 ~~private funds has been or will be invested in improvements to~~  
18 ~~real property or installed datacenter machinery and~~  
19 ~~equipment, or a combination thereof, within five years of the~~  
20 ~~date on which the first qualifying improvement is made,~~  
21 ~~regardless of any subsequent change in county development~~  
22 ~~tier status.~~

23 2. ~~For facilities that are not located in a development tier one~~  
24 ~~area at the time of application for the written determination,~~  
25 ~~that at least three hundred million dollars (\$300,000,000) in~~  
26 ~~private funds has been or will be invested in improvements to~~  
27 ~~real property or installed datacenter machinery and~~  
28 ~~equipment, or a combination thereof, within five years of the~~  
29 ~~date on which the first qualifying improvement is made,~~  
30 ~~regardless of any subsequent change in county development~~  
31 ~~tier status.~~

32 e. ~~The facility satisfies the wage standard and health insurance~~  
33 ~~requirements of G.S. 105-129.83."~~

34 **SECTION 6.** G.S. 105-187.51C reads as rewritten:

35 **"§ 105-187.51C. Tax imposed on datacenter machinery and equipment.**

36 (a) Tax. — A privilege tax is imposed on ~~an eligible datacenter, other than one as~~  
37 ~~defined in G.S. 105-164.3(8e),~~ the owner of a datacenter that meets the requirements of  
38 subsection (a1) of this section and that purchases machinery or equipment to be located and  
39 used at the datacenter that is capitalized for tax purposes under the Code and is used either:

40 (1) For the provision of datacenter services, including equipment cooling  
41 systems for managing the performance of the datacenter property; hardware  
42 and software for distributed and mainframe computers and servers; data  
43 storage devices; network connectivity equipment and peripheral components  
44 and systems.

45 (2) For the generation, transformation, transmission, distribution, or  
46 management of electricity, including exterior substations and other business  
47 personal property used for these purposes.

48 (a1) Requirements. — The Secretary of Commerce must certify that the datacenter meets  
49 all of the following requirements:

50 (1) An investment of private funds of at least two hundred twenty-five million  
51 dollars (\$225,000,000) has been or will be made in real and tangible

1                    personal property for the facility within five years of the date on which the  
2                    first property investment is made by the owner in the facility.

3                    (2)    The wage standard requirements of G.S. 105-129.83.

4                    (3)    The health insurance requirements of G.S. 105-129.83.

5                    (a2)   Second Datacenter. – A privilege tax is imposed on an owner of a datacenter that is  
6                    subject to tax under subsection (a) of this section, constructs a second datacenter, and purchases  
7                    machinery or equipment to be located and used at that datacenter. As used in this subsection,  
8                    the owner of a datacenter includes an entity that is owned by or under common control with the  
9                    owner of a datacenter subject to tax under subsection (a) of this section. The tax applies only if  
10                   the second datacenter meets the following requirements and the machinery or equipment that is  
11                   purchased is capitalized for tax purposes under the Code and is used for one of the purposes  
12                   listed in subsection (a) of this section:

13                   (1)    The Secretary of Commerce certifies that an investment of private funds of  
14                   at least seventy-five million dollars (\$75,000,000) has been or will be made  
15                   in real and tangible personal property for the facility within five years after  
16                   the facility subject to tax under subsection (a) of this section is placed into  
17                   service and that the datacenter meets the requirements in subsection (a1) of  
18                   this section, other than the minimum investment amount in that subsection.

19                   (2)    The two datacenters are linked through a fiber optic connection or a similar  
20                   connection.

21                   (3)    The datacenters are placed in service within five years of each other.

22                   (b)    Rate. – The tax is one percent (1%) of the sales price of the eligible equipment and  
23                   machinery. The maximum tax is eighty dollars (\$80.00) per article.

24                   (c)    Forfeiture. – If the required level of investment to qualify as an eligible datacenter is  
25                   not timely made, then the rate provided under this section is forfeited. If the required level of  
26                   investment is timely made but any eligible machinery and equipment is not located and used at  
27                   an eligible datacenter, then the rate provided for that machinery and equipment under this  
28                   section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales  
29                   and use taxes avoided as a result of the forfeiture, computed at the combined general rate from  
30                   the date the taxes would otherwise have been due, plus interest at the rate established under  
31                   G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by  
32                   this section, then interest is computed from the date the sales or use tax would otherwise have  
33                   been due. For all other forfeitures, interest is computed at the combined general rate from the  
34                   time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed  
35                   against the sales or use tax owed as a result of the forfeiture provisions of this subsection for  
36                   privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that  
37                   payment of the privilege tax occurred in a period outside the statute of limitations provided  
38                   under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest  
39                   applies only to the reduced amount. The past taxes and interest are due 30 days after the date of  
40                   forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to  
41                   the provisions of G.S. 105-236.

42                   (d)    Sunset. – This section expires for sales occurring on or after July 1, ~~2013~~2015."

43                   **SECTION 7.** This act becomes effective July 1, 2010, and applies to sales made on  
44                   or after that date.