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SESSION 2009

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SENATE BILL 1171
Finance Committee Substitute Adopted 5/26/10
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S1171-PCS65094-RBx-98

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; TO MODIFY ELIGIBILITY FOR THE ONE
4 PERCENT PRIVILEGE TAX ON DATACENTER MACHINERY AND EQUIPMENT;
5 AND TO MODIFY THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF
6 COMMERCE MAY EXTEND THE BASE PERIOD FOR A JDIG GRANT.

7 The General Assembly of North Carolina enacts:

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

9 "(8e) Eligible Internet datacenter. – A datacenter that satisfies each of the
10 following conditions:

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



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

2 "(23a) NAICS. – ~~Defined in G.S. 105-129.81.~~ The North American Industry
3 Classification System adopted by the United States Office of Management
4 and Budget as of December 31, 2007."

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

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

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

20 If the level of investment required by G.S. 105-164.3(8e)d. is not timely
21 made, then the exemption provided under this subdivision is forfeited. If the
22 level of investment required by G.S. 105-164.3(8e)d. is timely made but any
23 specific eligible business property is not located and used at an eligible
24 Internet ~~data center~~ datacenter, then the exemption provided for such
25 eligible business property under this subdivision is forfeited. If the level of
26 investment required by G.S. 105-164.3(8e)d. is timely made but any portion
27 of the electricity is not used at an eligible Internet ~~data center~~ datacenter,
28 then the exemption provided for such electricity under this subdivision is
29 forfeited. A taxpayer that forfeits an exemption under this subdivision is
30 liable for all past taxes avoided as a result of the forfeited exemption,
31 computed from the date the taxes would have been due if the exemption had
32 not been allowed, plus interest at the rate established under G.S. 105-241.21.
33 If the forfeiture is triggered due to the lack of a timely investment required
34 by G.S. 105-164.3(8e)d., then interest is computed from the date the taxes
35 would have been due if the exemption had not been allowed. For all other
36 forfeitures, interest is computed from the time as of which the eligible
37 business property or electricity was put to a disqualifying use. The past taxes
38 and interest are due 30 days after the date the exemption is forfeited. A
39 taxpayer that fails to pay the past taxes and interest by the due date is subject
40 to the provisions of G.S. 105-236."

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

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

45 ...
46 (3) Industries. – This subsection applies to the following industries:

- 47 ...
48 i. Paper-from-pulp manufacturing. – Paper-from-pulp manufacturing
49 means an industry primarily engaged in manufacturing or converting
50 paper, other than newsprint or uncoated groundwood paper, from

1 pulp or pulp products, or in converting purchased sanitary paper
2 stock or wadding into sanitary paper products.

3 ...

4 p. Turbine manufacturing. – Turbine manufacturing means an industry
5 primarily engaged in manufacturing turbines or complete turbine
6 generator set units, such as steam, hydraulic, gas, and wind. Turbine
7 manufacturing under this provision does not include the
8 manufacturing of aircraft turbines."

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

10 **"§ 105-187.50. Definitions.**

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

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

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

16 a. ~~Repealed by Session Laws 2009-451, s. 27A.3(v), effective August~~
17 ~~7, 2009.~~

18 b. ~~The Secretary of Commerce has made a written determination of the~~
19 ~~following:~~

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

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

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

40 **SECTION 6.** G.S. 105-187.51C(a)(1) reads as rewritten:

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

46 **SECTION 7.** G.S. 105-187.51C, as amended by Section 6 of this act, reads as
47 rewritten:

48 **"§ 105-187.51C. Tax imposed on datacenter machinery and equipment.**

49 (a) Tax. – A privilege tax is imposed on ~~an eligible datacenter, other than one as~~
50 ~~defined in G.S. 105-164.3(8e),~~ the owner of a datacenter that meets the requirements of

1 subsection (a1) of this section and that purchases machinery or equipment to be located and
2 used at the datacenter that is capitalized for tax purposes under the Code and is used either:

- 3 (1) For the provision of datacenter services, including equipment cooling
4 systems for managing the performance of the datacenter property; hardware
5 for distributed and mainframe computers and servers; data storage devices;
6 network connectivity equipment and peripheral components and systems.
- 7 (2) For the generation, transformation, transmission, distribution, or
8 management of electricity, including exterior substations and other business
9 personal property used for these purposes.

10 (a1) Requirements. – The Secretary of Commerce must certify that the datacenter meets
11 all of the following requirements:

- 12 (1) The investment requirements of this subdivision. The level of investment
13 required by this subdivision must consist of private funds that have been or
14 will be made in real and tangible personal property for the facility within
15 five years of the date on which the first property investment is made by the
16 owner of the facility.
 - 17 a. For facilities located in a development tier one area, at least one
18 hundred fifty million dollars (\$150,000,000).
 - 19 b. For facilities located in a development tier two area or a development
20 tier three area, at least two hundred twenty-five million dollars
21 (\$225,000,000).
- 22 (2) The wage standard requirements of G.S. 105-129.83.
- 23 (3) The health insurance requirements of G.S. 105-129.83.

24 (a2) Second Datacenter. – A privilege tax is imposed on an owner of a datacenter that is
25 subject to tax under subsection (a) of this section, constructs a second datacenter, and purchases
26 machinery or equipment to be located and used at that datacenter. As used in this subsection,
27 the owner of a datacenter includes an entity that is owned by or under common control with the
28 owner of a datacenter subject to tax under subsection (a) of this section. The tax applies only if
29 the second datacenter meets the following requirements and the machinery or equipment that is
30 purchased is capitalized for tax purposes under the Code and is used for one of the purposes
31 listed in subsection (a) of this section:

- 32 (1) The Secretary of Commerce certifies that an investment of private funds of
33 at least seventy-five million dollars (\$75,000,000) has been or will be made
34 in real and tangible personal property for the facility within five years after
35 the facility subject to tax under subsection (a) of this section is placed into
36 service and that the datacenter meets the requirements in subsection (a1) of
37 this section, other than the minimum investment amount in that subsection.
- 38 (2) The two datacenters are linked through a fiber-optic connection or a similar
39 connection.
- 40 (3) The datacenters are placed in service within five years of each other.

41 (b) Rate. Rate and Scope. – The tax is one percent (1%) of the sales price of the eligible
42 equipment and machinery. The maximum tax is eighty dollars (\$80.00) per article. The tax
43 does not apply to equipment and machinery of an eligible Internet datacenter that is exempt
44 from sales tax under G.S. 105-164.13(55).

45 (c) Forfeiture. – If the required level of investment to qualify as an eligible datacenter is
46 not timely made, then the rate provided under this section is forfeited. If the required level of
47 investment is timely made but any eligible machinery and equipment is not located and used at
48 an eligible datacenter, then the rate provided for that machinery and equipment under this
49 section is forfeited. A taxpayer that forfeits a rate under this section is liable for all past sales
50 and use taxes avoided as a result of the forfeiture, computed at the combined general rate from
51 the date the taxes would otherwise have been due, plus interest at the rate established under

1 G.S. 105-241.21. If the forfeiture is triggered due to the lack of a timely investment required by
2 this section, then interest is computed from the date the sales or use tax would otherwise have
3 been due. For all other forfeitures, interest is computed at the combined general rate from the
4 time as of which the machinery or equipment was put to a disqualifying use. A credit is allowed
5 against the sales or use tax owed as a result of the forfeiture provisions of this subsection for
6 privilege taxes paid pursuant to this section. For purposes of applying this credit, the fact that
7 payment of the privilege tax occurred in a period outside the statute of limitations provided
8 under G.S. 105-241.6 is not considered. The credit reduces the amount forfeited, and interest
9 applies only to the reduced amount. The past taxes and interest are due 30 days after the date of
10 forfeiture. A taxpayer that fails to pay the past taxes and interest by the due date is subject to
11 the provisions of G.S. 105-236.

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

13 **SECTION 8.** G.S. 143B-437.59 reads as rewritten:

14 "**§ 143B-437.59. Failure to comply with agreement.**

15 ...

16 (b) If a business fails to maintain employment at the levels stipulated in the agreement
17 or otherwise fails to comply with any condition of the agreement for any two consecutive
18 years:

19 (1) If the business is still within the base period established by the
20 ~~Committee, Committee, but not the final year of the base period,~~ the
21 Committee shall withhold the grant payment for any consecutive year after
22 the second consecutive year remaining in the base period in which the
23 business fails to comply with any condition of the agreement, and the
24 Committee may extend the base period for up to 24 additional months.
25 Under no circumstances may the Committee extend the base period by more
26 than a total of 24 months. In no event shall the term of the grant be extended
27 beyond the date set by the Committee at the time the Committee awarded the
28 grant.

29 (2) If the business is in the final year of the base period established by the
30 Committee, the Committee shall withhold the grant payment for any
31 consecutive year after the second consecutive year remaining in the base
32 period in which the business fails to comply with any condition of the
33 agreement, and the Committee may do either of the following:

34 a. The Committee may extend the base period for up to 24 additional
35 months, if the business has created fewer than 1,000 jobs pursuant to
36 its agreement.

37 b. The Committee may extend the base period for up to 48 additional
38 months if the business has created and maintained at least 1,000 jobs
39 pursuant to its agreement.

40 (3) If the business is no longer within the base period established by the
41 Committee, the Committee shall terminate the agreement.

42 (4) Under no circumstances may the Committee extend the base period by more
43 than a total of 48 months. In no event shall the term of the grant be extended
44 beyond the date set by the Committee at the time the Committee awarded the
45 grant."

46 **SECTION 9.** Section 6 of this act becomes effective January 1, 2010. The
47 remainder of this act becomes effective July 1, 2010, and applies to sales made on or after that
48 date.