
Computer Data Center Equipment Exemption Program

Program Guidelines

February 2024

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Section I - Introduction

The Commonwealth of Pennsylvania, through the Pennsylvania Department of Revenue (the “Department”), administers the Computer Data Center Exemption Program (the “Program”) authorized under Act 25 of 2021.

Beginning January 1, 2022, computer data center equipment is exempt from Pennsylvania sales and use tax when it is sold to, used or consumed in a certified data center, by an owner, operator or qualified tenant holding a Computer Data Center Sales and Use Tax Certificate of Exemption (“Exemption”) issued by the Department.

Section II - Program Certification and Eligibility

An owner or operator of a computer data center must submit a complete application to the Department for certification within the Program. The application must include an affirmation, that the company will meet the requirements for eligibility on or before the fourth anniversary of certification. Certification is valid for a period of 25 full calendar years following the year in which the owner or operator filed the application for certification.

Conditional Approval or denial of the application will be provided to the applicant within 60 days of submission. An application shall be considered approved if the Department fails to approve or deny an application that has been acknowledged by the Office of Economic Development as received within 60 days after the application is submitted.

By the fourth anniversary, to remain certified, a computer data center shall notify the Department in writing it has met all of the requirements, after taking into account the combined investments made and annual compensation paid by the owner or operator of the computer data center or the qualified tenant.

Requirements:

- (1) *On or before the fourth anniversary of certification, the computer data center creates a minimum investment of:*
 - i. At least \$75,000,000 of new investment, on or after January 1, 2022, if the computer data center is located in a county with a population of 250,000 or fewer individuals and creates 25 new jobs; or
 - ii. At least \$100,000,000 of new investment, on or after January 1, 2022, if the computer data center is located in a county with a population of more than 250,000 individuals and creates 45 new jobs.

- (2) *One or more taxpayers operating or occupying a computer data center, in the aggregate, pay annual compensation of at least \$1,000,000 to employees at the certified computer data center site for each year of the certification after the fourth anniversary of certification.*

Exclusion: A telecommunications provider's computer data center that does not have retail or wholesale customers being billed or paying for services and does provide a majority of services for internal use or use by the telecommunications provider's subsidiaries is excluded from certification and qualification in the exemption program.

Under the conditional approval status, the Department reserves the right to determine if the compliance for reporting and compliance in tax laws outlined in Section 2935-D have been satisfied; if not, the Department may revoke the certification and recapture all or part of the tax benefits provided to the owner, operator or qualified tenants during the qualification period.

- If the applicant fails to meet the requirements by the fourth anniversary of the certification, the Department may revoke the certification and recapture all or part of the tax benefits provided to the owner, operator or qualified tenants during the qualification period.
- If the applicant fails to maintain the annual compensation requirements after the fourth anniversary to maintain the certification status, the Department may revoke the certification and recapture all or part of the tax benefits provided to the owner, operator or qualified tenants during the qualification period.
- If the applicant is deemed non-compliant with annual clearance requirements to maintain the certification status and fails to become compliant, the Department may revoke the certification and recapture all or part of the tax benefits provided to the owner, operator or qualified tenants during the qualification period.

Pursuant to Article XVII-A.1 of the Tax Reform Code, applicants within the program must maintain tax compliance status.

The owner or operator of the computer data center may appeal the revocation. Appeals filed under this section shall be governed by Article II of the Tax Reform Code.

An owner, operator or qualified tenant located within a data center with the conditional approval status may apply for a tax exemption.

Section III - Tax Exemption Application, Qualification and Renewal Period

Once certification is established, each owner, operator and qualified tenant must submit an application to the Department's program office for a Sales and Use Tax Exemption.

- Data centers that have obtained certification are eligible to apply for an Exemption.
- Data centers that apply for certification under the parameters in Section II of the guidelines, will be eligible to apply for an Exemption after certification is granted by the

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Department. If the certification occurs in 2024, the effective date of the Exemption will be from the date of certification until December 31, 2024.

Each Exemption will have a unique exemption number. It is prohibited for the owner, operator or qualified tenant to utilize an expired Exemption.

Renewal applications for an Exemption, effective January 1, 2025 until December 31, 2025 are due by October 1, 2024.

- Renewal applications received by October 1, 2024 will receive a new exemption certificate prior to December 31, 2024 for the 2025 calendar year.
- Renewal applications received after October 1, 2024 will be processed in the order received.

Note: If the certified data center owner, operator or qualified tenant do not possess a valid exemption certificate, sales and use tax must be paid. The certified data center owner, operator or qualified tenant may seek a refund of the tax through a Petition for Refund filed with the Board of Appeals. Please see www.boardofappeals.state.pa.us for more information

Section IV - Qualified Tenant List

Tenants that have a valid occupancy agreement with the owner or operator of the certified data center for occupancy within the data center and commit to use at least 100 kilowatts per month for two or more years may be placed on a list by the owner or operator of the data center and communicated to the Department's program office.

The qualified tenant list must be on the form prescribed by the Department and submitted with all required supporting documentation prior to October 1 annually or within 30 days of certification. Failure to provide the list to the Department will result in the disqualification of tenant applications for an Exemption or renewal of an Exemption.

Qualified tenants may apply for an Exemption or renewal of an exemption for a period expiring at the earlier of the expiration of the term of the occupancy agreement or the end of the 10th full calendar year following the calendar year in which the qualified tenant enters into the occupancy agreement.

Section V – Sales and Use Tax Exemption

A. Eligibility

To be eligible to participate in the Computer Data Center Exemption program and qualify for an Exemption:

- 1) The owner, operator or qualified tenant must be located within a certified computer data center facility, through which the Exemption is being requested.
 - If an owner, operator or qualified tenant has multiple locations within certified computer data center facilities, separate applications for an Exemption are required.
 - If applying as a qualified tenant, the legal name of the qualified tenant must be on the qualified tenant list and submitted to the Department of Revenue prior to application for an Exemption.
- 2) A separate application for an Exemption must be filed annually, on behalf of each owner, operator or qualified tenant.
- 3) The owner, operator or qualified tenant, must be in state tax compliance as determined by the Department of Revenue.
 - State Tax Compliance requires the applicant to have filed all required state tax reports and returns for all applicable taxable years and paid any balance of state tax due as determined at settlement or assessment by the Department of Revenue, unless the tax due is under appeal at the time the finding was made by the Department of Revenue.
 - The two issues for determination are entity tax compliance and ownership tax compliance for entity owners with a 20% or greater share of ownership.
 - The state tax clearance form for tax credit and economic development programs can be accessed here: www.revenue.pa.gov/taxcredits.

B. Exemption Presentation to Vendors for Utilization

- 1) Each owner, operator or qualified tenant approved to receive an Exemption, will be issued a Certificate of Exemption (form number REVK-704), under the Computer Data Center Equipment Exemption program.
- 2) The Exemption (form number REVK-704) is only valid for purchases of exempt computer data center equipment made by the entity issued the certificate and used or consumed exclusively at the certified data center location.
 - The name of the entity issued the certificate and certified data center address are on the front of the certificate.

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- No other entity may purchase items on behalf of the entity holding the Exemption.
 - Purchased items may only be shipped to the data center address listed on the Exemption.
- 3) A copy of the Exemption (form number REVK-704) and Pennsylvania Exemption Certificate (form number REV-1220) must be provided to the vendor. The exemption certificates (both the REVK-704 and REV-1220), must be in the vendor's possession on or before the 60th day following the date of the sale or lease to which the certificate relates.
- If the vendor refuses to accept the Exemption, the certified data center owner, operator or qualified tenant must pay the sales tax. The certified data center owner, operator or qualified tenant may seek a refund of the tax through a Petition for Refund filed with the Board of Appeals. Please see www.boardofappeals.state.pa.us for more information.
- 4) The Exemption is only valid for use within the Certified Data Center Address from the effective date to the expiration date issued on the Exemption.
- An expired Exemption may be retained for tax records; however, the use of the Exemption after the expiration date or use of an alternative address is prohibited.

C. Permitted Utilization of the Exemption

Computer data center equipment is exempt from Pennsylvania sales and use tax when it is sold to a certified data center owner, operator or qualified tenant for installation in a Certified Computer Data Center.

Computer data center equipment is defined as: Equipment that is used to outfit, operate or benefit a computer data center and component parts, installations, refreshments, replacements and upgrades to the equipment, whether any of the equipment is affixed to or incorporated into real property, including:

- 1) All equipment necessary for the transformation, generation, distribution or management of electricity that is required to operate computer servers or similar data storage equipment, including generators, uninterruptible energy supplies, conduit, gaseous fuel piping, cabling, duct banks, switches, switchboards, batteries and testing equipment.
- 2) All equipment necessary to cool and maintain a controlled environment for the operation of the computer servers or data storage systems and other components of the computer data center, including mechanical equipment, refrigerant piping, gaseous fuel piping, adiabatic and free cooling systems, cooling towers, water softeners, air handling units, indoor direct exchange units, fans, ducting and filters.

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- 3) All water conservation systems, including facilities or mechanisms that are designed to collect, conserve and reuse water.
- 4) All software, including, but not limited to, enabling software and licensing agreements, computer servers or similar data storage equipment, chassis, networking equipment, switches, racks, cabling, trays and conduit.
- 5) All monitoring equipment and security systems.
- 6) Modular data centers and preassembled components of any item described in this definition, including components used in the manufacturing of modular data centers.
- 7) Other tangible personal property that is essential to the operations of a computer data center.

D. Prohibited Utilization of the Exemption

- 1) Laptop computers, handheld devices and motor vehicles for use both inside and outside the computer data center.
- 2) Equipment used by the data center to generate electricity for resale purposes to a power utility.
- 3) Equipment used by the computer data center to generate, provide, or sell more than 5% of its electricity outside of the computer data center.

Please refer to the Frequently Asked Questions document maintained by the Department on its website for questions and answers pertaining to utilization of the Exemption.

Section VI – Compliance, Monitoring and Recapture

A. Tax Compliance

Upon submission of the computer data center certification application, the applicant must be in compliance with the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Department. Failure to achieve state tax compliance during the review period will result in the denial of the certification.

- State Tax Compliance requires the applicant to have filed all required state tax reports and returns for all applicable taxable years and paid any balance of state tax due as determined at settlement or assessment by the Department of Revenue, unless the tax due is under appeal at the time the finding was made by the Department of Revenue.
- The two issues for determination are entity tax compliance and ownership tax compliance for entity owners with a 20% or greater share of ownership.

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- The state tax clearance form for tax credit and economic development programs can be accessed here: www.revenue.pa.gov/taxcredits.

B. Monitoring and Recapture

The Department has the authority to request and audit records held by the data center owner, operator and qualified tenants that document investments created by the data center, including costs of buildings, computer data center equipment, and all tax refunds directly received by the owner, operator or qualified tenants, necessary to demonstrate it meets the requirements for certification.

- Participants in the program will be subject to Sales and Use Tax Compliance Audits conducted by the Department to evaluate overall tax compliance and validate eligibility requirements and utilization of the Exemption.

If the Department determines that the requirements for eligibility have not been satisfied, the Department may revoke the certification and recapture all or part of the tax exemption received by the owner, operator or qualified tenant.

C. Records Submission

All certified data centers are encouraged to provide the two Records Submission Forms for Program Monitoring, (Section XI) on an annual basis to document new investments required within the first 4 years of participation in the program.

In addition, the owner, operator or qualified tenants must:

- 1) Maintain detailed records of all investments created by the computer data center, including costs of buildings and computer data center equipment and all tax exemptions received by the owner or operator or qualified tenant.
- 2) Maintain purchase and cash disbursement journals for examination by the department.
- 3) Maintain copies of all invoices for all purchases and make any available upon request.
- 4) Maintain asset depreciation schedules or similar documents identifying all capital assets.
- 5) Maintain payroll journals for examination by the Department.

Section VII - Definitions

Computer data center: All or part of a facility that may be composed of one or more businesses, owners or tenants, that is or will be predominantly used to house working servers or similar data storage systems and that may have uninterruptible energy supply or generator backup power, or both, cooling systems, towers and other temperature control infrastructure.

Computer data center equipment: Equipment that is used to outfit, operate or benefit a computer data center and component parts, installations, refreshments, replacements and upgrades to the equipment, whether any of the equipment is affixed to or incorporated into real property, including:

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- 1) All equipment necessary for the transformation, generation, distribution or management of electricity that is required to operate computer servers or similar data storage equipment, including generators, uninterruptible energy supplies, conduit, gaseous fuel piping, cabling, duct banks, switches, switchboards, batteries and testing equipment.
- 2) All equipment necessary to cool and maintain a controlled environment for the operation of the computer servers or data storage systems and other components of the computer data center, including mechanical equipment, refrigerant piping, gaseous fuel piping, adiabatic and free cooling systems, cooling towers, water softeners, air handling units, indoor direct exchange units, fans, ducting and filters.
- 3) All water conservation systems, including facilities or mechanisms that are designed to collect, conserve and reuse water.
- 4) All software, including, but not limited to, enabling software and licensing agreements, computer servers or similar data storage equipment, chassis, networking equipment, switches, racks, cabling, trays and conduit.
- 5) All monitoring equipment and security systems.
- 6) Modular data centers and preassembled components of any item described in this definition, including components used in the manufacturing of modular data centers.
- 7) Other tangible personal property that is essential to the operations of a computer data center.

New investment: Construction, expansion or build out of data center space at either a new or an existing computer data center on or after January 1, 2022, and the purchase and installation of computer data center equipment, except for items described under paragraph (4) of the definition of computer data center equipment.

Owner or operator: Includes a single entity, multiple entities or affiliated entities.

Qualified tenant: An entity that contracts with the owner or operator of a computer data center that is certified pursuant to this article to use or occupy part of the computer data center for at least 100 kilowatts per month for two or more years.

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Section VIII - Contact Information

Please mail all correspondence to:

Pennsylvania Department of Revenue
Office of Economic Development
1133 Strawberry Square
Harrisburg PA 17128

For additional information on the Computer Data Center Equipment Exemption Program, contact the Office of Economic Development at 717-772-3896 or ra-rveconomic-dev@pa.gov.

Section XI - Application for Computer Data Center Certification

<u>Computer Data Center Equipment Exemption Program</u>		
PRIMARY BUSINESS REPRESENTATIVE		
Please provide an attachment to this page if the business has a secondary representative or additional representatives that may answer questions and discuss confidential tax matters in relation to the application.		
Name:		
Title:		
Company Name:		
Phone:		
E-mail:		
Mailing Address:		
City:	State:	ZIP Code:
BUSINESS INFORMATION		
Entity or Operator Name:		
Facility Name:		
Facility Address:		
City:	State:	ZIP Code:

ELIGIBILITY REQUIREMENTS

To become certified, a computer data center must all of the following requirements, after taking into account the combined investments made and annual compensation paid by the owner or operator of the computer data center or the qualified tenant:

- (1) On or before the fourth anniversary of certification, the computer data center creates a minimum investment of:
- At least \$75,000,000 of new investment, on or after January 1, 2022, if the computer data center is located in a county with a population of 250,000 or fewer individuals and creates 25 new jobs; or
 - At least \$100,000,000 of new investment, on or after January 1, 2022, if the computer data center is located in a county with a population of more than 250,000 individuals and creates 45 new jobs.
- (2) One or more taxpayers operating or occupying a computer data center, in the aggregate, pay annual compensation of at least \$1,000,000 to employees at the certified computer data center site for each year of the certification after the fourth anniversary of certification.

Exclusion: A telecommunications provider's computer data center that does not have retail or wholesale customers being billed or paying for services and does provide a majority of services for internal use or use by the telecommunications provider's subsidiaries is excluded from certification and qualification in the exemption program.

SUPPORTING DOCUMENTATION

A notarized affidavit with signature from the authorized executive representing the owner or operator, that the computer data center is expected to satisfy the certification requirement selected for Program Eligibility.

If applicable, information sufficient to identify the specific portion or portions of the facility comprising the computer data center.

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STATEMENT OF AUTHENTICITY Please provide the name of person completing the application.	
Name:	
Signature:	
Date of Submission:	

Upon submission of this application, the applicant must be in compliance with the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Department of Revenue. Failure to achieve state tax compliance during the review period will result in the denial of the certification.

Section X - Application for Exemption

<u>Computer Data Center Equipment Exemption Program</u>		
PRIMARY BUSINESS REPRESENTATIVE		
Please provide an attachment to this page if the business has a secondary representative or additional representatives that may answer questions and discuss confidential tax matters in relation to the application.		
Name:		
Title:		
Company Name:		
Phone:		
E-mail:		
Mailing Address:		
City:	State:	ZIP Code:
DATA CENTER FACILITY INFORMATION		
Data Center Facility Name:		
Data Center Facility Address:		
City:	State:	ZIP Code:

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APPLICANT IDENTIFICATION		
Applicant Name:		
Phone:		
E-mail:		
Corporate Mailing Address:		
City:	State:	ZIP Code:
Please identify how the applicant qualifies for the computer data center equipment incentive program: <input type="radio"/> Owner <input type="radio"/> Operator <input type="radio"/> Qualified Tenant		
TAX INFORMATION		
Entity Type:		
<u>Indicate how the entity reports to the Internal Revenue Service?</u> <input type="radio"/> C Corporation <input type="radio"/> S Corporation <input type="radio"/> Partnership <input type="radio"/> Limited Liability Company (LLC) <input type="radio"/> Limited Partnership (LP)		
<u>If LLC is selected, is the LLC a</u> <input type="radio"/> Partnership <input type="radio"/> C Corporation <input type="radio"/> S Corporation <input type="radio"/> Disregarded Entity (Corporate) LLC <input type="radio"/> Disregarded Entity (Sole Proprietorship) <input type="radio"/> Single-Owner LLC		
Federal Employer Identification Number:		
PA Revenue ID:		
NAICS Code:		

CLEARANCE REQUIREMENT

Attest that a State Tax Clearance Form was filed with the Department of Revenue. Instructions and a link to the clearance form can be accessed here: www.revenue.pa.gov/taxcredits

ELIGIBILITY REQUIREMENTS

To be eligible to participate in the Computer Data Center Exemption program and qualify for an Exemption:

- 1) The owner, operator or qualified tenant must be located within a certified computer data center facility, through which the Exemption is being requested.
 - If an owner, operator or qualified tenant has multiple locations within certified computer data center facilities, separate applications for an Exemption are required.
 - If applying as a qualified tenant, the legal name of the qualified tenant must be on the qualified tenant list and submitted to the Department of Revenue prior to application for an Exemption.
- 2) A separate application for an Exemption must be filed annually, on behalf of each owner, operator or qualified tenant.
- 3) The owner, operator or qualified tenant, must be in state tax compliance as determined by the Department of Revenue.

STATEMENT OF AUTHENTICITY

Please provide the name of person completing the application.

Name:

Signature:

Date of Submission:

DEPARTMENT USE ONLY POST MARK DATE:

Upon submission of this application, the applicant must be in compliance with the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Department of Revenue. Failure to achieve state tax compliance during the review period will result in the denial of the exemption.

