Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Technology & Economic Development Committee

HB 1759

Brief Description: Modifying the computer data center sales and use tax exemption.

Sponsors: Representatives Manweller and Ormsby.

Brief Summary of Bill

- Extends the computer data center sales and use tax exemption for original server equipment and replacement server equipment until April 1, 2026.
- Beginning July 1, 2015, changes the computer data center sales and use tax exemption into a remittance equal to: (1) five percent of the state and local sales taxes paid for original server equipment; and (2) ninety-five percent of the state and local sales taxes paid for replacement server equipment.
- Increases the employment requirements for a qualifying business or qualifying tenant receiving a computer data center sales and use tax exemption.
- Reduces a portion of the state-shared rural sales and use tax provided to a county in proportion to increases in property tax revenues on real and personal property that come into a county from computer data centers.
- Beginning January 1, 2016, prohibits a city or county that has a computer data center located within its boundaries from imposing a state-shared lodging tax if the computer data center qualifies for a sales and use tax exemption.
- Establishes performance metrics for the computer data center sales and use tax exemption.

Hearing Date: 2/17/15

Staff: Nikkole Hughes (786-7156).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Sales and Use Tax Exemption for Eligible Server Equipment and Power Infrastructure for Eligible Computer Data Centers.

Retail sales and use taxes are imposed by the state, most cities, and all counties. Retail sales taxes are imposed on retail sales of most articles of tangible personal property and digital products and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the property, digital products, or services were acquired by the user, then use taxes apply to the value of most tangible personal property and digital products and some services when used in the state. The state sales and use tax rate is 6.5 percent. Local tax rates vary from 0.5 percent to 3.0 percent, depending on location.

A sales and use tax exemption is provided for eligible server equipment and power infrastructure for eligible computer data centers. The exemption expires on April 1, 2020. In order to qualify, a data center must:

- be located in a rural county;
- be at least 20,000 square feet; and
- commence construction between March 31, 2010, and July 1, 2011, or between March 31, 2012, and July 1, 2015.

Within six years of construction, a qualifying business or qualifying tenant must have created 35 family-wage employment positions or three family-wage jobs per 20,000 square feet of space.

Eligible server equipment is the original server equipment installed in an eligible data center on or after April 1, 2010, as well as replacement server equipment that replaces the originally exempted servers. To qualify for the exemption, replacement servers must be installed and put into regular use prior to April 1, 2018.

Any person who has received a tax deferral for investment projects in rural counties on the construction, renovation, or expansion of, or the machinery and equipment for, a structure used as a computer data center is not eligible to receive the computer data center use tax exemption.

Rural Sales and Use Tax.

The legislative authority of a rural county may impose a local sales and use tax of up to 0.09 percent. The tax is credited against the state's 6.5 percent sales and use tax and is not an additional tax to the consumer. An eligible county must have an average population density of less than 100 people per square mile or be smaller than 225 square miles. The tax revenue from the rural sales and use tax may only be used to finance public facilities, such as street improvements, bridges, and water and sewer systems, which are listed in the local economic development or comprehensive plan. Once a county qualifies and the tax has been levied, it may continue for up to 25 years.

Property Tax.

All real and personal property in Washington is subject each year to the state's property tax based on its value, unless a specific exemption is provided by law. The tax is determined by multiplying the assessed value of property by the tax rate for each taxing district in which the property is located.

Lodging Tax.

A lodging tax is a special sales tax on lodging rentals by hotels, motels, and other similar facilities. Cities and counties are authorized to levy a basic or state-shared hotel-motel tax of up to 2 percent. These taxes are credited against the state sales tax on the furnishing of lodging. Other hotel-motel taxes are imposed in addition to ordinary state and local sales taxes and are added to the amount paid by the customer. The latter type is often referred to as a special hotel-motel tax. Lodging tax revenues may be used by local jurisdictions for operations expenditures for tourism promotion as well as to fund and operate festivals and special events designed to attract tourists. Lodging tax revenues may also be used for capital expenditures for tourism-related facilities owned or operated by municipalities or public facility districts.

Tax Preference Reporting Requirements.

A qualifying business or qualifying tenant claiming the computer data center sales and use tax exemption must file an annual report with the Department of Revenue (DOR). The report must include information detailing employment, wages, and employer-provided health and retirement benefits for the year that the tax exemption was claimed.

Tax Preference Performance Statement.

In 2013 the Legislature passed Engrossed Substitute Senate Bill 5882 (ESSB 5882), which requires all new tax preference legislation to include a tax preference performance statement. New tax preference means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits.

The performance statement must clearly specify the public policy objective of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee to evaluate the efficacy of the tax preference.

ESSB 5882 also establishes an automatic 10-year expiration date for new tax preference if an alternative expiration date is not provided in the new tax preference legislation.

Summary of Bill:

Sales and Use Tax Exemption for Eligible Server Equipment and Power Infrastructure for Eligible Computer Data Centers.

Beginning July 1, 2015, the sales and use tax exemption provided for eligible server equipment and power infrastructure for eligible computer data centers is changed into a remittance. The amount of exemption in the form of a remittance is equal to:

- five percent of the state and local sales taxes paid for original server equipment; and
- ninety-five percent of the state and local sales taxes paid for replacement server equipment.

A qualifying business or qualifying tenant must apply to the Department of Revenue (DOR) for a remittance of sales tax. A purchaser may not apply for a remittance more frequently than once per quarter. The DOR may only approve 12 applications for the 5 percent sales tax exemption for original server equipment.

The sales and use tax exemption expires on April 1, 2026. In order to qualify, a data center must:

- be located in a rural county;
- be at least 20,000 square feet; and
- commence construction between March 31, 2010, and July 1, 2011, or between March 31, 2012, and July 1, 2020.

Within six years of construction, a qualifying business or qualifying tenant must have created 45 family-wage employment positions or four family-wage jobs per 20,000 square feet of space.

Eligible server equipment is the original server equipment installed in an eligible data center on or after April 1, 2010, as well as replacement server equipment that replaces the originally exempted servers. To qualify for the exemption, replacement servers must be installed and put into regular use prior to April 1, 2026.

Any person who has received a tax deferral for investment projects in rural counties on the construction, renovation, or expansion of, or the machinery and equipment for, a structure used as a computer data center is no longer ineligible to receive the computer data center use tax exemption.

Rural Sales and Use Tax.

A county imposing a rural sales and use tax must modify its tax rate to reflect increases or decreases in county property tax revenues from a computer data center, and personal property used within a computer data center, if:

- construction of the computer data center commences on or after July 1, 2015; and
- the computer data center qualifies for the computer data center sales and use tax exemption.

Beginning January 1, 2016, a county must decrease its tax rate beginning with the first calendar year in which additional property tax revenues will be generated from a computer data center. If a county has decreased its tax rate, it may subsequently increase its tax rate to the maximum amount otherwise allowable if the assessed value of a computer data center, or the assessed value of personal property used within a computer data center, decreases by more than 50 percent from the highest assessed value of such properties in the previous three years.

Beginning in 2021, the DOR is not required to make a determination regarding a tax rate adjustment for a rural county unless a county contacts the DOR about a possible tax rate increase.

Lodging Tax.

Beginning January 1, 2016, any city or county that has a computer data center located within its boundaries may not impose a lodging tax if the computer data center qualifies for a sales and use tax exemption.

Tax Preference Reporting Requirements.

A qualifying business or qualifying tenant claiming the computer data center sales and use tax exemption must include in its annual report to the DOR additional information about the parcel number for the eligible computer data center, the unemployment insurance account number associated with the computer data center, and the total amount expended for electrical power in the calendar year, including the cost per kilowatt-hour.

Tax Preference Performance Statement.

A tax preference performance statement provides that the goal of the computer data center sales and use tax exemption is to encourage the siting of new data centers, with commensurate job growth, in rural counties, and to mitigate the fiscal impact of the exemption to the state.

The Joint Legislative Audit and Review Committee is directed to measure the effectiveness of the exemption by evaluating changes in certain performance metrics. These metrics state that the effectiveness of the exemption will be measured based on:

- the number of computer data centers for which the sales and use tax exemption have been claimed;
- the number of family wage employment positions;
- the cost and availability of electrical power in areas where computer data centers are located;
- property taxes assessed on computer data centers and server equipment and changes in the assessment rolls for cities and counties in which computer data centers are located; and
- the amount of sales and use taxes exempted.

Appropriation: None.

Fiscal Note: Requested on February 2, 2015.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015.