

# SENATE BILL 397

Q4, Q1

(0lr2529)

## ENROLLED BILL

— Budget and Taxation / Ways and Means —

Introduced by **Senators Hershey and Peters**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

### CHAPTER \_\_\_\_\_

1 AN ACT concerning

#### 2 **Sales and Use Tax and Personal Property Tax – Exemptions – Data Centers**

3 FOR the purpose of providing an exemption from the sales and use tax for certain sales of  
4 certain qualified data center personal property for use at certain qualified data  
5 centers under certain circumstances; requiring an individual or a corporation to  
6 apply to the Department of Commerce for an exemption certificate for the exemption;  
7 requiring that the application include certain information; requiring the Department  
8 of Commerce to certify eligibility for the exemption and each year to submit to the  
9 Comptroller a list of eligible individuals and corporations; requiring the Comptroller  
10 to issue a certificate of eligibility for the exemption within a certain number of days  
11 after receiving the eligibility list; requiring that the certificate be renewed each year;  
12 providing that the certificate may not be renewed for more than a certain number of  
13 consecutive years, subject to a certain exception; requiring certificate holders to  
14 maintain certain records and allow the Department of Commerce to inspect the  
15 records for a minimum number of years after the certificate expires; authorizing the

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* indicate opposite chamber / conference committee amendments.



1 Department of Commerce, under certain circumstances, to revoke the certificate;  
 2 requiring that the individual or corporation be afforded a certain appeal before the  
 3 Comptroller is notified of the revocation; authorizing the Comptroller to make a  
 4 certain assessment; authorizing the governing body of a county or municipal  
 5 corporation to reduce or eliminate the assessment of certain personal property used  
 6 in certain qualified data centers; requiring the governing body of a county or  
 7 municipal corporation to submit a copy of a certain law to the State Department of  
 8 Assessments and Taxation; providing that, if the State Department of Assessments  
 9 and Taxation receives a copy of the law on or before a certain date, the law is effective  
 10 for the next taxable year; requiring the State Department of Assessments and  
 11 Taxation, under certain circumstances, to provide a municipal corporation with a  
 12 certain assessment of certain personal property; authorizing the State Department of  
 13 Assessments and Taxation to adopt certain regulations; defining certain terms;  
 14 providing for the application of certain provisions of this Act; and generally relating  
 15 to exemptions from the sales and use tax and personal property tax for qualified data  
 16 center personal property.

17 BY adding to  
 18 Article – Tax – General  
 19 Section 11–236  
 20 Annotated Code of Maryland  
 21 (2016 Replacement Volume and 2019 Supplement)

22 BY adding to  
 23 Article – Tax – Property  
 24 Section 7–246  
 25 Annotated Code of Maryland  
 26 (2019 Replacement Volume)

27 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
 28 That the Laws of Maryland read as follows:

29 **Article – Tax – General**

30 **11–236.**

31 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
 32 **INDICATED.**

33 **(2) “DATA CENTER” MEANS A BUILDING OR GROUP OF BUILDINGS**  
 34 **USED TO HOUSE COMPUTER SYSTEMS, COMPUTER STORAGE EQUIPMENT, AND**  
 35 **ASSOCIATED INFRASTRUCTURE THAT BUSINESSES OR OTHER ORGANIZATIONS USE**  
 36 **TO ORGANIZE, PROCESS, STORE, AND DISSEMINATE LARGE AMOUNTS OF DATA.**

37 **(3) “DEPARTMENT” MEANS THE DEPARTMENT OF COMMERCE.**

1           (4) “OPPORTUNITY ZONE” MEANS AN AREA THAT HAS BEEN  
2 DESIGNATED AS A QUALIFIED OPPORTUNITY ZONE IN THE STATE UNDER § 1400Z-1  
3 OF THE INTERNAL REVENUE CODE.

4           (5) (I) “QUALIFIED DATA CENTER” MEANS A DATA CENTER  
5 LOCATED IN THE STATE IN WHICH AN INDIVIDUAL OR A CORPORATION, WITHIN 3  
6 YEARS AFTER SUBMITTING AN APPLICATION FOR THE SALES AND USE TAX  
7 EXEMPTION UNDER THIS SECTION, HAS:

8                   1. FOR A DATA CENTER LOCATED WITHIN A TIER I AREA,  
9 INVESTED AT LEAST \$2,000,000 IN QUALIFIED DATA CENTER PERSONAL PROPERTY  
10 AND CREATED AT LEAST FIVE QUALIFIED POSITIONS; OR

11                   2. FOR A DATA CENTER LOCATED IN ANY OTHER AREA OF  
12 THE STATE, INVESTED AT LEAST \$5,000,000 IN QUALIFIED DATA CENTER PERSONAL  
13 PROPERTY AND CREATED AT LEAST FIVE QUALIFIED POSITIONS.

14           (II) “QUALIFIED DATA CENTER” INCLUDES:

15                   1. A DATA CENTER THAT IS A CO-LOCATED OR HOSTING  
16 DATA CENTER WHERE EQUIPMENT, SPACE, AND BANDWIDTH ARE AVAILABLE TO  
17 LEASE TO MULTIPLE CUSTOMERS; AND

18                   2. AN ENTERPRISE DATA CENTER OWNED AND  
19 OPERATED BY THE COMPANY IT SUPPORTS.

20           (6) (I) “QUALIFIED DATA CENTER PERSONAL PROPERTY” MEANS  
21 PERSONAL PROPERTY PURCHASED OR LEASED TO ESTABLISH OR OPERATE A DATA  
22 CENTER.

23           (II) “QUALIFIED DATA CENTER PERSONAL PROPERTY”  
24 INCLUDES:

25                   1. COMPUTER EQUIPMENT OR ENABLING SOFTWARE  
26 USED FOR THE PROCESSING, STORAGE, RETRIEVAL, OR COMMUNICATION OF DATA,  
27 INCLUDING SERVERS, ROUTERS, CONNECTIONS, AND OTHER ENABLING HARDWARE  
28 USED IN THE OPERATION OF THAT EQUIPMENT;

29                   2. HEATING, VENTILATION, AND AIR-CONDITIONING  
30 AND MECHANICAL SYSTEMS, INCLUDING CHILLERS, COOLING TOWERS,  
31 AIR-HANDLING UNITS, PUMPS, ENERGY STORAGE OR ENERGY EFFICIENCY  
32 TECHNOLOGY, AND OTHER CAPITAL EQUIPMENT USED IN THE OPERATION OF THAT  
33 EQUIPMENT; AND

1                   **3. EQUIPMENT NECESSARY FOR THE GENERATION,**  
2 **TRANSFORMATION, TRANSMISSION, DISTRIBUTION, OR MANAGEMENT OF**  
3 **ELECTRICITY, INCLUDING EXTERIOR SUBSTATIONS, GENERATORS, TRANSFORMERS,**  
4 **UNIT SUBSTATIONS, UNINTERRUPTIBLE POWER SUPPLY SYSTEMS, BATTERIES,**  
5 **POWER DISTRIBUTION UNITS, REMOTE POWER PANELS, AND ANY OTHER CAPITAL**  
6 **EQUIPMENT NECESSARY FOR THESE PURPOSES.**

7                   **(7) (I) “QUALIFIED POSITION” MEANS A POSITION THAT:**

- 8                   **1. IS A FULL-TIME POSITION OF INDEFINITE DURATION;**
- 9                   **2. PAYS AT LEAST 150% OF THE STATE MINIMUM WAGE;**
- 10                   **3. IS NEWLY CREATED BECAUSE A DATA CENTER BEGINS**  
11 **OR EXPANDS IN A SINGLE LOCATION IN THE STATE; AND**
- 12                   **4. IS FILLED.**

13                   **(II) “QUALIFIED POSITION” DOES NOT INCLUDE A POSITION:**

- 14                   **1. CREATED IF AN EMPLOYMENT FUNCTION IS SHIFTED**  
15 **FROM AN EXISTING DATA CENTER IN THE STATE TO ANOTHER DATA CENTER OF**  
16 **RELATED OWNERSHIP IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;**
- 17                   **2. CREATED THROUGH A CHANGE IN OWNERSHIP OF A**  
18 **TRADE OR BUSINESS;**
- 19                   **3. CREATED THROUGH A CONSOLIDATION, MERGER, OR**  
20 **RESTRUCTURING OF A BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN**  
21 **THE STATE;**
- 22                   **4. CREATED IF AN EMPLOYMENT FUNCTION IS**  
23 **CONTRACTUALLY SHIFTED FROM AN EXISTING BUSINESS ENTITY IN THE STATE TO**  
24 **ANOTHER BUSINESS ENTITY IF THE POSITION IS NOT A NET NEW JOB IN THE STATE;**  
25 **OR**
- 26                   **5. FILLED FOR A PERIOD OF LESS THAN 12 MONTHS.**

27                   **(8) “TIER I AREA” MEANS:**

- 28                   **(I) A TIER I COUNTY AS DEFINED IN § 1-101 OF THE ECONOMIC**  
29 **DEVELOPMENT ARTICLE; OR**
- 30                   **(II) AN OPPORTUNITY ZONE.**

1 (B) THE SALES AND USE TAX DOES NOT APPLY TO THE SALE OF QUALIFIED  
2 DATA CENTER PERSONAL PROPERTY FOR USE AT A QUALIFIED DATA CENTER IF THE  
3 BUYER PROVIDES THE VENDOR WITH EVIDENCE OF ELIGIBILITY FOR THE  
4 EXEMPTION ISSUED BY THE COMPTROLLER.

5 (C) (1) TO QUALIFY FOR THE SALES AND USE TAX EXEMPTION UNDER  
6 SUBSECTION (B) OF THIS SECTION, AN INDIVIDUAL OR A CORPORATION SHALL FILE  
7 AN APPLICATION FOR AN EXEMPTION CERTIFICATE WITH THE DEPARTMENT.

8 (2) THE APPLICATION MUST:

9 (I) DEMONSTRATE THAT THE APPLICANT INTENDS TO MEET  
10 THE REQUIREMENTS OF A QUALIFIED DATA CENTER; AND

11 (II) INCLUDE ANY INFORMATION THE DEPARTMENT REQUIRES  
12 TO EVIDENCE THE CAPACITY AND INTENTION OF THE APPLICANT TO FULFILL THE  
13 COMMITMENTS SET FORTH IN THE APPLICANT'S APPLICATION.

14 (3) IF, BASED ON THE INFORMATION AND SUPPORTING  
15 DOCUMENTATION PROVIDED IN THE APPLICATION, THE DEPARTMENT DETERMINES  
16 THE APPLICANT IS ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION UNDER  
17 SUBSECTION (B) OF THIS SECTION, THE DEPARTMENT SHALL CERTIFY THE  
18 ELIGIBILITY OF THE APPLICANT.

19 (D) (1) EACH YEAR, THE DEPARTMENT SHALL PROVIDE THE  
20 COMPTROLLER WITH A LIST OF INDIVIDUALS AND CORPORATIONS THAT THE  
21 DEPARTMENT DETERMINES ARE ELIGIBLE FOR THE SALES AND USE TAX EXEMPTION  
22 UNDER SUBSECTION (B) OF THIS SECTION.

23 (2) WITHIN 30 DAYS AFTER RECEIVING THE LIST DESCRIBED IN  
24 PARAGRAPH (1) OF THIS SUBSECTION, THE COMPTROLLER SHALL ISSUE TO EACH  
25 INDIVIDUAL AND CORPORATION LISTED A CERTIFICATE OF ELIGIBILITY FOR THE  
26 SALES AND USE TAX EXEMPTION UNDER SUBSECTION (B) OF THIS SECTION.

27 (3) (I) THE CERTIFICATE OF ELIGIBILITY ISSUED UNDER  
28 PARAGRAPH (2) OF THIS SUBSECTION:

29 ~~(#)~~ 1. MUST BE RENEWED EACH YEAR; AND

30 ~~(#)~~ 2. EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
31 PARAGRAPH, MAY NOT BE RENEWED FOR MORE THAN 10 CONSECUTIVE YEARS.



1 7-246.

2 (A) IN THIS SECTION, “QUALIFIED DATA CENTER” AND “QUALIFIED DATA  
3 CENTER PERSONAL PROPERTY” HAVE THE MEANINGS STATED IN § 11-236 OF THE  
4 TAX – GENERAL ARTICLE.

5 (B) THE GOVERNING BODY OF A COUNTY OR MUNICIPAL CORPORATION MAY  
6 REDUCE OR ELIMINATE, BY LAW, THE PERCENTAGE OF THE ASSESSMENT OF ANY  
7 QUALIFIED DATA CENTER PERSONAL PROPERTY USED IN A QUALIFIED DATA  
8 CENTER THAT IS SUBJECT TO THE COUNTY OR MUNICIPAL CORPORATION PROPERTY  
9 TAX UNDER THIS TITLE.

10 (C) (1) A COUNTY OR MUNICIPAL CORPORATION THAT REDUCES OR  
11 ELIMINATES THE PERCENTAGE OF ASSESSMENT OF TAXABLE QUALIFIED DATA  
12 CENTER PERSONAL PROPERTY UNDER SUBSECTION (B) OF THIS SECTION SHALL  
13 SUBMIT A COPY OF THE LAW TO THE DEPARTMENT.

14 (2) IF THE DEPARTMENT RECEIVES A COPY OF THE LAW ON OR  
15 BEFORE MAY 1, THE CHANGE WILL BE EFFECTIVE FOR THE TAXABLE YEAR  
16 FOLLOWING THE DATE THE LAW IS ENACTED.

17 (D) IF ANY QUALIFIED DATA CENTER PERSONAL PROPERTY IS EXEMPT  
18 UNDER SUBSECTION (C) OF THIS SECTION FROM COUNTY PROPERTY TAX BUT IS  
19 SUBJECT TO MUNICIPAL CORPORATION PROPERTY TAX, THE DEPARTMENT OR THE  
20 SUPERVISOR SHALL PROVIDE THE MUNICIPAL CORPORATION WITH THE  
21 ASSESSMENT OF THE QUALIFIED DATA CENTER PERSONAL PROPERTY.

22 (E) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS  
23 SECTION.

24 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be  
25 applicable to all taxable years beginning after June 30, 2020.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July  
27 1, 2020.