

HOUSE BILL NO. 4905

July 18, 2023, Introduced by Reps. Farhat, Andrews, Tsernoglou, Martus, McFall, Snyder, Rheingans, Hoskins, Dievendorf and Haadsma and referred to the Committee on Tax Policy.

A bill to amend 1937 PA 94, entitled
"Use tax act,"

by amending section 4cc (MCL 205.94cc), as added by 2015 PA 252.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4cc. (1) Subject to subsections (2) and (3), beginning
2 January 1, 2016 through December 31, ~~2035~~, **2050**, the tax under this
3 act does not apply to the storage, use, or consumption of data
4 center equipment sold to the owner or operator of a qualified data
5 center or a colocated business for assembly, use, or consumption in
6 the operations of the qualified data center or data center

1 equipment sold or provided to a person engaged in the business of
 2 constructing, altering, repairing, or improving real estate for
 3 others to the extent the data center equipment is to be affixed to
 4 or made a structural part of a qualified data center.

5 (2) The exemption under ~~this section only~~ **subsection (1)**
 6 continues to apply after January 1, 2022, **only** if the numbers
 7 gathered by the local economic development corporations are
 8 certified and reported to the ~~department of talent and economic~~
 9 ~~development~~ **Michigan strategic fund** and subsequently forwarded to
 10 the department and demonstrate that the qualified data centers, the
 11 colocated businesses, and the contractors of the qualified data
 12 centers, collectively, have, in aggregate, established in this
 13 state at least 400 data center industry jobs or data center
 14 industry related jobs, or a combination of both, since January 1,
 15 2016. The ~~department of talent and economic development~~ **Michigan**
 16 **strategic fund** shall submit a report no later than April 1, 2022
 17 related to the number of data center industry jobs or data center
 18 industry related jobs that have been established since January 1,
 19 2016 to the speaker and minority leader of the house of
 20 representatives, the majority and minority leaders of the senate,
 21 and the governor. **As used in this subsection and subsection (3),**
 22 **"data center industry jobs" and "data center industry related jobs"**
 23 **do not include jobs held by qualified employees as that term is**
 24 **defined in subsection (8) (e) (vii) (C).**

25 (3) The exemption under ~~this section only~~ **subsection (1)**
 26 continues to apply after January 1, 2026, **only** if the numbers
 27 gathered by the local economic development corporations are
 28 certified and reported to the ~~department of talent and economic~~
 29 ~~development~~ **Michigan strategic fund** and subsequently forwarded to

1 the department and demonstrate that the qualified data centers, the
2 colocated businesses, and the contractors of the qualified data
3 centers, collectively, have, in aggregate, established in this
4 state at least 1,000 data center industry jobs or data center
5 industry related jobs, or a combination of both, since January 1,
6 2016. The ~~department of talent and economic development~~ **Michigan**
7 **strategic fund** shall submit a report no later than April 1, 2026
8 related to the number of data center industry jobs or data center
9 industry related jobs that have been established since January 1,
10 2016 to the speaker and minority leader of the house of
11 representatives, the majority and minority leaders of the senate,
12 and the governor.

13 (4) Subject to subsection (5), beginning on the effective date
14 of the amendatory act that added this subsection through December
15 31, 2050 or, with respect to an enterprise data center subject to a
16 certificate that is located on the property included in a
17 brownfield plan under the brownfield redevelopment financing act,
18 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once
19 an industrial site used primarily as a power plant to generate
20 electricity for sale, through December 31, 2065, the storage, use,
21 or consumption of data center equipment sold to either of the
22 following is exempt from the tax imposed by this act:

23 (a) A qualified entity or its affiliates for assembly, use, or
24 consumption in the operations of an enterprise data center subject
25 to a certificate.

26 (b) A person engaged in the business of constructing,
27 altering, repairing, or improving real estate for others to the
28 extent the data center equipment is to be affixed to or made a
29 structural part of an enterprise data center subject to a

1 certificate.

2 (5) In order for a purchaser to claim an exemption under
3 subsection (4), at the time the data center equipment is sold to
4 the purchaser, the qualified entity must have received a
5 certificate for that facility that is in good standing.

6 (6) All of the following apply with respect to the exemption
7 under subsection (4):

8 (a) A person seeking a certificate for an enterprise data
9 center must apply to the Michigan strategic fund on a form and in
10 the manner prescribed by the Michigan strategic fund. The
11 application must include an affirmation signed by the applicant
12 stating that it expects the facility to satisfy each of the
13 criteria for an enterprise data center under subsection (8) (e) and
14 the anticipated time frame for doing so. Within 120 days after
15 receiving a complete and correct application, the Michigan
16 strategic fund shall review the application and either issue a
17 certificate to the applicant or provide written reasons for its
18 denial. The certificate must specify a time frame for a facility to
19 satisfy each of the criteria for an enterprise data center under
20 subsection (8) (e). The Michigan strategic fund shall provide the
21 department with a copy of each certificate issued under this
22 section.

23 (b) The qualified entity of a facility for which a certificate
24 has been issued shall report to the Michigan strategic fund all
25 information required by the Michigan strategic fund regarding
26 purchases for which an exemption is claimed under subsection (4)
27 and such other information as may be required by the Michigan
28 strategic fund to determine whether the facility continues to
29 qualify as an enterprise data center. The report required by this

1 subdivision is subject to audit and must be made on an annual basis
2 following issuance of the certificate. The report required by this
3 subdivision must not include any remittance for tax and does not
4 constitute a return or otherwise alleviate any obligations under
5 section 6.

6 (c) The Michigan strategic fund shall revoke a certificate
7 issued under this section if it determines a facility no longer
8 meets the definition of an enterprise data center. If the Michigan
9 strategic fund determines revocation is appropriate, it shall
10 provide written notice to the qualified entity and the department
11 not less than 60 days, but not more than 180 days, before
12 revocation, notifying the qualified entity of its preliminary
13 determination to revoke the certificate and providing the qualified
14 entity an opportunity to demonstrate, within the time period
15 specified in the notice, that the facility continues to meet the
16 definition of an enterprise data center. Following the expiration
17 of the time period specified in the notice, if the Michigan
18 strategic fund determines that the facility does not meet the
19 definition of an enterprise data center, the Michigan strategic
20 fund shall revoke the certificate. If revocation occurs not more
21 than 10 years after issuance of the certificate, the former
22 qualified entity shall pay to the department an amount equal to the
23 entire amount of the tax exemptions stemming from the certificate
24 that have been received under subsection (4) by all persons, plus
25 interest as specified in section 23(2) of 1941 PA 122, MCL 205.23,
26 calculated from January 1 of the year the exemption was received
27 until the amount is paid to the department under this subdivision.
28 If revocation occurs more than 10 years after issuance of the
29 certificate, the former qualified entity shall pay to the

1 department an amount equal to the entire amount of the tax
2 exemptions stemming from the certificate that have been received
3 under subsection (4) by all persons, plus interest as specified in
4 section 23(2) of 1941 PA 122, MCL 205.23, calculated from January 1
5 of the year the exemption was received until the amount is paid to
6 the department under this subdivision, unless the Michigan
7 strategic fund determines, pursuant to published guidelines, that a
8 lesser amount, but not less than an amount equal to 50% of the
9 entire amount of the tax exemptions stemming from the certificate
10 that have been received by all persons under subsection (4), is
11 appropriate after evaluating the circumstances. During the time
12 period specified in the notice described in this subdivision, all
13 persons must cease claiming a tax exemption stemming from the
14 certificate under subsection (4). If a certificate is revoked, the
15 Michigan strategic fund shall notify the department within 5 days
16 after the revocation.

17 (7) A person engaged in the business of constructing,
18 altering, repairing, or improving real estate for others that has
19 claimed an exemption under subsection (4)(b) for a particular
20 facility must submit an annual summary report to the qualified
21 entity or former qualified entity to which a certificate for that
22 facility was issued on or before January 1 of each year that
23 provides, at a minimum, information sufficient to identify the
24 person that made the purchases and the purchase price of all items
25 purchased each month of that year. Such a person must also maintain
26 all invoices, bills of sale, or similar documents for all claimed
27 exempt purchases that indicate the date of purchase, the items
28 purchased, and the purchase price of the property that is
29 identified in the summary report for 4 years after the date of the

1 purchase.

2 (8) ~~(4)~~—As used in this section:

3 (a) "Affiliate" means a person that directly, or indirectly
4 through 1 or more intermediaries, controls, is controlled by, or is
5 under common control with a specified person.

6 (b) "Certificate" means the document issued by the Michigan
7 strategic fund to an applicant under subsection (6)(a) that
8 certifies or otherwise establishes that the facility developed,
9 owned, and operated by the applicant or an affiliate of the
10 applicant, or to be developed, owned, and operated by the applicant
11 or an affiliate of the applicant, and identified in that document
12 qualifies as an enterprise data center under this section.

13 (c) ~~(b)~~—"Colocated business" means a person that has entered
14 into a contract with the owner or operator of a qualified data
15 center to use or deploy data center equipment physically located
16 within the qualified data center for a period of 1 or more years.

17 (d) ~~(e)~~—"Data center equipment" means only computers, servers,
18 routers, switches, peripheral computer devices, racks, shelving,
19 cabling, wiring, storage batteries, back-up generators,
20 uninterrupted power supply units, environmental control equipment,
21 other redundant power supply equipment, and prewritten computer
22 software used in operating, managing, or maintaining the qualified
23 data center **or enterprise data center** or the business of the
24 qualified data center or a colocated business. Data center
25 equipment also includes any construction materials used or
26 assembled **for the construction or modification of an enterprise**
27 **data center or**, under the qualified data center's proprietary
28 method, for the construction or modification of a qualified data
29 center, including, but not limited to, building materials,

1 infrastructure, machinery, wiring, cabling, devices, tools, and
2 equipment that would otherwise be considered a fixture or related
3 equipment. Data center equipment does not include any equipment
4 owned by a third party that is used to supply the qualified data
5 center's primary power.

6 (e) "Enterprise data center" means, subject to subdivision
7 (f), a facility that the Michigan strategic fund determines meets,
8 or is expected to meet within the time frame set forth in the
9 certificate, all of the following requirements:

10 (i) The facility is located in this state.

11 (ii) The facility is composed of 1 or more buildings or an
12 array of interconnected buildings.

13 (iii) The facility is primarily designed and intended for
14 housing, and does house, data center equipment to centralize the
15 storage and processing of the qualified entity's or any of its
16 affiliates' own data, and is developed, owned, and operated by a
17 qualified entity or any of its affiliates for the qualified
18 entity's or any of its affiliates' exclusive use. As used in this
19 subparagraph, "exclusive use" includes use by contractors of the
20 qualified entity or its affiliates for or on behalf of the
21 qualified entity or its affiliates.

22 (iv) The aggregate capital investment in the facility described
23 in this subdivision made by the qualified entity, and any of its
24 affiliates that will develop, own, and operate the facility, is not
25 less than \$250,000,000.00.

26 (v) The qualified entity and any of its affiliates, in the
27 aggregate, create and maintain an aggregate annual compensation to
28 qualified employees at the facility described in this subdivision
29 of not less than \$1,000,000.00, on or before the fifth anniversary

1 of the issuance of a certificate of occupancy for the facility
2 described in this subdivision. As used in this subdivision:

3 (A) "Aggregate capital investment" means capital investment
4 made and maintained in the facility to the extent that investment
5 results in an increase in the total capital investment that the
6 qualified entity and its affiliates, in the aggregate, maintain in
7 this state when compared to the total capital investment that the
8 applicant and its affiliates, in the aggregate, maintained in this
9 state before issuance of the certificate, as determined and
10 verified by the Michigan strategic fund.

11 (B) "County average wage" means the average annual wage for
12 the county where the facility is located based on the most recent
13 data made available by the Michigan bureau of labor market
14 information and strategic initiatives. If the facility is located
15 in more than 1 county, the county average wage shall be based
16 solely on the average annual wage for the county with the highest
17 average annual wage, from among the applicable counties, based on
18 the most recent data made available by the Michigan bureau of labor
19 market information and strategic initiatives.

20 (C) "Qualified employee" means an employee at the facility
21 described in this subdivision in a position created by the
22 qualified entity or its affiliates earning a wage at or above 120%
23 of the county average wage.

24 (f) Enterprise data center does not include a facility that
25 the Michigan strategic fund determines no longer meets, or is no
26 longer expected to meet within the time frame set forth in the
27 certificate, the requirements in subdivision (e).

28 (g) "Michigan strategic fund" means the Michigan strategic
29 fund as described in the Michigan strategic fund act, 1984 PA 270,

1 **MCL 125.2001 to 125.2094.**

2 **(h)** ~~(d)~~—"Qualified data center" means a facility composed of 1
3 or more buildings located in this state and the facility is owned
4 or operated by an entity engaged at that facility in operating,
5 managing, or maintaining a group of networked computers or
6 networked facilities for the purpose of centralizing, or allowing 1
7 or more colocated businesses to centralize, the storage,
8 processing, management, or dissemination of data of 1 or more other
9 persons who is not an affiliate of the owner or operator of a
10 qualified data center or of a colocated business and the entity
11 receives 75% or more of its revenue from colocated businesses that
12 are not an affiliate of the owner or operator of the qualified data
13 center.

14 **(i) "Qualified entity" means an applicant to whom a**
15 **certificate is issued for a particular enterprise data center**
16 **project under subsection (6) (a) and who is in compliance with the**
17 **requirements of subsections (5) and (6).**

18 Enacting section 1. This amendatory act takes effect 90 days
19 after the date it is enacted into law.