

2022 South Dakota Legislature

Senate Bill 157**AMENDMENT 157A FOR THE INTRODUCED BILL**

1 **An Act to exempt the sale of certain goods related to information technology from**
2 **a gross receipts tax.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 10-45 be amended with a NEW SECTION:**

5 The terms used in this Act mean:

6 (1) "Computer software," software used at a qualified data center, and the software's
7 maintenance, licensing, and customization;

8 (2) "Data center," a centralized repository for the storage, management, and
9 dissemination of electronic data and information;

10 (3) "Enterprise information technology equipment":

11 (a) Computer hardware, servers, routers, cooling systems, and cooling towers;

12 (b) Temperature control infrastructure and power infrastructure for the
13 transformation, distribution, or management of electricity used for the
14 maintenance and operation of a qualified data center;

15 (c) Exterior dedicated business-owned substations, backup power generation
16 systems, battery systems, or other related infrastructure; and

17 (d) Racking systems, raised flooring, cabling, or trays necessary for the
18 maintenance and operation of a qualified data center;

19 (4) "Qualified business," the owner, operator, or tenants of a qualified data center;

20 (5) "Qualified data center," a facility located in this state:

21 (a) Comprised of one or more buildings, the primary purpose of which is to
22 contain a data center, ~~with an aggregate square footage of sixteen~~
23 ~~thousand or more;~~

24 (b) Located on a single parcel or on contiguous parcels of land;

25 (c) On which construction is completed or that is substantially refurbished after
26 December 31, 2021;

- 1 (d) Equipped with uninterrupted power supplies, generator backup, or both;
2 (e) Equipped with sophisticated fire suppression and prevention systems; and
3 (f) Equipped with video camera surveillance and an electronic system requiring
4 pass codes, key cards, or biometric scans to restrict access to selected
5 personnel;

6 ~~In determining the total square footage of a qualified data center, the~~
7 ~~square footage of office space, meeting space, mechanical space, and other~~
8 ~~support facility spaces must be included if those spaces are used to support~~
9 ~~the operation of enterprise information technology equipment;~~ and

- 10 (6) "Substantially refurbished," ~~ten thousand square feet or more of~~ a data center has
11 been rebuilt, modified, or improved through energy efficiency improvements,
12 building improvements, and the installation of enterprise information technology
13 equipment, environmental controls, and computer software.

14 **Section 2. That chapter 10-45 be amended with a NEW SECTION:**

15 Gross receipts from sales of enterprise information technology equipment and
16 computer software, in excess of two million dollars in a fiscal year, purchased for use by
17 a qualifying business in a qualified data center are exempt from the tax imposed by this
18 chapter. To qualify for the exemption, the enterprise information technology equipment
19 or computer software must be used at or physically located within the qualified data
20 center.

21 **Section 3. That chapter 10-45 be amended with a NEW SECTION:**

22 Qualified data center owners that intend to collocate operators or tenants within
23 the center shall provide the operators or tenants with documentation from the Department
24 of Revenue that the center meets the definition of a qualified data center under this
25 section. Operators or tenants shall obtain and submit a copy of the documentation with
26 all applications for sales tax exemption on information technology equipment and
27 computer software purchased for use in the qualified data center.

28 **Section 4. That chapter 10-45 be amended with a NEW SECTION:**

29 To receive the exemption at the time of purchase or installation, the qualified
30 business shall obtain from the Department of Revenue a certificate that the enterprise
31 information technology equipment or computer software the qualified business intends to

1 purchase qualifies for the exemption. If a certificate is not received before the purchase,
2 the qualified business shall pay the applicable tax imposed by this chapter and may apply
3 to the Department of Revenue for a refund.

4 The future owner of a proposed data center shall apply to the Department of
5 Revenue to receive certification as a qualified data center to receive the exemption
6 provided in this Act.

7 If the enterprise information technology equipment is purchased or installed by a
8 contractor subject to the tax imposed by this chapter, the qualified business may apply
9 for a refund of the difference between the amount remitted by the contractor and the
10 exemption imposed or allowed by this section. Application for a refund must be made at
11 the time and in the manner directed by the Department of Revenue and must include
12 sufficient information to permit the Department of Revenue to verify the sales and use
13 taxes paid and the exempt status of the sale or use.

14 **Section 5.** ~~The provisions of this Act are repealed on June 30, 2028.~~