

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 1957 Tangible Personal Property Used in the Construction or Operation of Data Centers
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**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 130
RETAILERS' OCCUPATION TAX**

Section 130.1957 Tangible Personal Property Used in the Construction or Operation of Data Centers

- a) Effective January 1, 2020, *qualified tangible personal property used in the construction or operation of a data center that has been granted a certificate of exemption by the Department of Commerce and Economic Opportunity ("DCEO"), whether that tangible personal property is purchased by the owner, operator, or tenant, of the data center or by a contractor or subcontractor of the owner, operator, or tenant is exempt from Retailers' Occupation Tax.* (Section 2-5(44) of the Act) To receive the exemption, the data center must obtain a certificate of exemption from DCEO pursuant to Section 605-1025 of the Department of Commerce and Economic Opportunity Law (DCEO Law) [20 ILCS 605].
- b) For purposes of this Section:
- 1) *"Data center" means a building or a series of buildings rehabilitated or constructed to house working servers in one physical location or multiple sites within the State of Illinois.* (Section 2-5 (44) of the Act).
 - 2) Qualified Tangible Personal Property
 - A) *"Qualified Tangible Personal Property" means:*
 - i) *electrical systems and equipment; climate control and chilling equipment and systems; mechanical systems and equipment; monitoring and secure systems; emergency generators; hardware; computers; servers; data storage devices; network connectivity equipment; racks; cabinets; telecommunications cabling infrastructure; raised floor systems; peripheral components or systems; software; mechanical, electrical, or plumbing systems; battery systems; cooling systems and towers; temperature control systems; other cabling; and other data center infrastructure equipment and systems necessary to operate qualified tangible personal property, including fixtures; and*
 - ii) *component parts of any of the property listed in subsection (b)(2)(A)(i), including installation, maintenance, repair, refurbishment, and replacement of qualified tangible personal property to generate, transform, transmit, distribute, or manage electricity necessary to operate qualified tangible personal property; and all other tangible personal property that is essential to the operations of a computer data center.*
 - B) *The term "qualified tangible personal property" also includes building materials physically incorporated into the qualifying data center.* (Section 2-5(44) of the Act)

- 3) "Qualifying Illinois data center" for purposes of applying, for a certificate of exemption, means a new or existing data center that meets the requirements of Section 605-1025 of the DCEO Law.
- c) Each owner, operator, or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant, must provide an active certificate of exemption before it can make tax exempt purchases of qualified tangible personal property.
- d) *Data centers that would have qualified for a certificate of exemption prior to January 1, 2020, had P.A. 101-31 been in effect, may apply for and obtain an exemption for subsequent purchases of computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the original investment that would have qualified. (Section 2-5(44) of the Act)*
- e) To document the exemption allowed under this Section, the retailer must obtain from the owner, operator, or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant, a copy of the certificate of exemption issued by DCEO.
 - 1) In addition, the retailer must obtain a certification that contains:
 - A) the name and description of the purchaser (i.e., owner, operator, contractor, subcontractor, or tenant);
 - B) a statement that the tangible personal property is being purchased for use in the construction or operation of a data center located in Illinois;
 - C) the location or address of the data center;
 - D) a description of the tangible personal property being purchased;
 - E) the purchaser's signature and date of purchase.
 - 2) The use of blanket certificates of exemption will be permitted.
- f) Tangible Personal Property Used in the Rehabilitation, Construction and Operation of a Data Center – Tangible Personal Property Qualifying for the Exemption
 - 1) Tangible personal property purchased and used in the rehabilitation and construction of a building or series of buildings that house working servers, and that is physically incorporated into the building or series of buildings, qualifies for the exemption. For example, gross receipts from sales of the following items qualify for the exemption:
 - A) common building materials, such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal;
 - B) plumbing systems and components of those systems, such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes;
 - C) heating systems and components of those systems, such as furnaces, ductwork, vents, stokers, boilers, heating pipes and radiators;
 - D) electrical systems and components of those systems, such as wiring, outlets and light fixtures that are physically incorporated into the real estate;

- E) central air conditioning systems, ventilation systems and components of those systems that are physically incorporated into the real estate;
 - F) built-in cabinets physically incorporated into the real estate;
 - G) built-in appliances, such as refrigerators, stoves, ovens and trash compactors that are physically incorporated into the real estate; and;
 - H) floor coverings, such as tile, linoleum and carpeting that are glued or otherwise permanently affixed to the real estate by use of tacks, staples, or wood stripping filled with nails that protrude upward (sometimes referred to as "tacking strips" or "tack-down strips").
- 2) Tangible personal property purchased and used in the rehabilitation and construction of a building or series of buildings that house working servers and that is not physically incorporated into the building or series of buildings qualifies for the exemption. For example, gross receipts from sales of tools, machinery and other similar items that are used to rehabilitate and construct the data center qualify for the exemption.
- 3) Tangible personal property purchased and used in the operation of a data center qualifies for the exemption. An example of this tangible personal property is the equipment used to provide data or cloud services. The exemption does not extend to tangible personal property used by personnel in the day-to-day operations of the business. For example, gross receipts from the sales of the following do not qualify for the exemption:
- A) office supplies, cleaning supplies and office equipment; and
 - B) cell phones and personal communication devices.
- 4) Tangible personal property used in the installation, maintenance, repair, refurbishment and replacement of qualified tangible personal property to generate, transform, transmit, distribute or manage electricity necessary to operate qualified tangible personal property is exempt. Except as provided in this subsection (f)(4) and subsection (h)(3), the exemption does not include tangible personal property used to maintain, repair, refurbish or replace qualified tangible personal property or to install that tangible personal property.
- 5) Tangible personal property purchased that is not used in the construction or operation of a data center does not qualify for the exemption. For example, gross receipts from sales of the following items do not qualify for the exemption:
- A) motor vehicles used by managers and office personnel;
 - B) indoor and outdoor plants and landscaping materials;
 - C) concrete, cement, asphalt and outdoor lighting used in the construction or maintenance of parking facilities;
 - D) free-standing appliances, such as stoves, oven, refrigerators, washing machines, portable ventilation units, window air conditioning units, lamps, clothes washers, clothes dryers, trash compactors and dishwashers, that may be connected to and operate from a building's electrical or plumbing system but that are not physically incorporated into the real estate;

- E) floor coverings, such as rugs, that do not qualify under subsection (f)(1)(H) or that are attached to the structure or physical plant using only two-sided tape; and
 - F) fuel used in the of operation of a data center, except that fuel used in emergency back-up generators to supply uninterrupted power to the data center servers and equipment qualifies for the exemption.
- g) If the retailer obtains the documents identified in subsection (e) from the owner, operator or tenant of a data center, or a contractor or subcontractor of the owner, operator or tenant of a data center, the retailer shall be relieved of any tax liability relating to the sale in the event the tangible personal property purchased by the owner, operator, tenant, contractor or subcontractor from the retailer is not used by the owner, operator, tenant, contractor or subcontractor in the construction or operation of a data center identified in the exemption certificate issued by DCEO. If it is subsequently determined that the tangible personal property was not used in the construction or operation of a qualifying data center, the owner, operator, tenant, contractor or subcontractor shall be liable for Use Tax on the purchase of the tangible personal property for which an exemption was claimed under this Section.
- h) Tangible Personal Property Leased to Owners, Operators, Contractors, Subcontractors and Tenants of Data Centers
- 1) Except as provided in subsections (h)(2) and (h)(3), and tangible personal property that is purchased by a lessor and leased to an owner, operator or tenant, or a contractor or subcontractor of the owner, operator or tenant, of a data center, does not qualify for the data center exemption. The exemption does not extend to lessors. Lessors of tangible personal property under true leases are deemed to be the users of that property. Consequently, lessors incur a Use Tax liability (and applicable local occupation tax reimbursement obligations) based on their cost price for the items. (See Section 130.220 (Sales to Lessors of Tangible Personal Property) and Section 130.2010 (Persons Who Rent or Lease the Use of Tangible Personal Property to Others).)
 - 2) Tangible personal property that is purchased by an owner, operator or tenant, or a contractor or subcontractor of the owner, operator or tenant, of a data center, as a lessor, and leased to an owner, operator or tenant of a data center, will qualify for the data center exemption.

EXAMPLE: The owner of a data center purchases servers from its supplier and leases the servers to a tenant of the data center for use in the data center. The servers meet the definition of "qualified tangible personal property" and the owner may purchase the servers using the data center exemption.
 - 3) In the case of data centers that were in existence prior to January 1, 2020 and have obtained an exemption certificate, computer equipment or enabling software leased to upgrade, supplement or replace existing computer equipment or enabling software purchased or leased, that would have qualified as qualified tangible personal property when purchased or leased, is exempt. (See subsection (d).) In the case of data centers that were in existence prior to January 1, 2020, the lessor of the computer equipment or enabling software that is leased to the owner, operator or tenant of the data center after January 1, 2020 may claim the exemption for the first lease of computer equipment or enabling software after January 1, 2020 to upgrade, supplement or replace existing computer equipment or enabling software.
 - i) An item that initially qualifies for the data center exemption that is converted to a nonexempt use or is moved to a nonqualified location will become subject to tax at the time of its conversion based on the lesser of the purchase price or fair market value of the item at the time of conversion.

- j) The exemption, for tangible personal property used in the construction or operation of a data center, in Section 2-5(44) of the Retailers' Occupation Tax Act and this Section is not subject to the sunset provisions of Section 2-70 of the Retailers' Occupation Tax Act.

(Source: Amended at 44 Ill. Reg. 5392, effective March 16, 2020)