Missouri Data Center Incentive
SB 149

Effective Date: August 28, 2015
What is a “data center”? 

- For the purposes of this incentive a data center is:
  - Primarily engaged in data processing, hosting, and related services (NAICS 518210); or,
  - Internet publishing and broadcasting and web search portals at the business facility (NAICS 519130)
What types of facilities are included?

- There are two main types of facilities included:
  - Expanding facility
    - existing facility, or
    - replacement facility
  - New facility
    - Any facility that did not exist before August 28, 2015
- Includes the construction, extension, improvement, equipping, and operation of an expanding or new facility.
What is an expanding facility?

1. An **expanding facility** may be an “**existing facility**” (operational in MO as a data storage center prior to 8/28/15, as determined by DED) that expands its operations in MO on or after 8/28/15.

2. An **expanding facility** may also be a “**replacement facility**” (a facility in this state which replaces another facility located within this state which the taxpayer or related taxpayer previously operated but discontinued operations within one year prior to commencement of the operations at the new facility)
A **new facility** or new data storage center is a facility in this state that:

1. Is acquired or leased to an operating taxpayer on or after August 28\(^{th}\), 2015 as indicated by:
   - Transfer of title
   - Transfer of possession under a binding contract to transfer title
   - Or an operating taxpayer takes possession of the facility under the terms of the lease on or after August 28, 2015
   - Or, if the facility is constructed, erected, or installed by or on behalf of an operating taxpayer, such construction, erection or installation is completed after August 28\(^{th}\), 2015
Any facility which was acquired by an operating or constructing taxpayer from another person or persons on or after August 28, 2015, and such facility was employed prior to August 28, 2015 by any other persons in the operation of a data storage center shall not be considered a new facility.

A new facility shall continue to be a new facility regardless of a subsequent change in or addition of operating taxpayers or constructing taxpayers.
## Eligibility Requirements

<table>
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<td>Investment</td>
<td>$5 million “investment” Within 12 months of conditional approval</td>
<td>$25 million “investment” Within 36 months of conditional approval</td>
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<tr>
<td>Jobs</td>
<td>5 new FT* jobs with avg. wage of 150% of “Co. Avg. Wage” Within 24 months of conditional approval</td>
<td>10 new FT* jobs with avg. wage of 150% of “Co. Avg. Wage” Within 36 months of conditional approval</td>
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<td>Benefits</td>
<td>An exemption on state and local sales taxes spent for expanding operations (taxes defined, levied, or calculated under sections 32.085, 144.010-144.525, 144.600-144.761 or 238.235) For a project period not to exceed 10 years</td>
<td>100% of state and local sales and use taxes (taxes defined, levied, or calculated under sections 32.085, 144.010-144.525, 144.600-144.761 or 238.235) For a project period not to exceed 15 years</td>
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</table>

*FT=For the purposes of this program, full-time employees are those scheduled to work at least 35 hours/week at the facility.
Eligibility Requirements cont.

- **FT**=For the purposes of this program, full-time employees are those scheduled to work at least 35 hours/week at the facility.
- **County average wage**=The average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility.
New job calculation = total number of FT employees located at the project facility that exceeds the greater of:

- Number of FT employees located at the project facility on the date of the submission of the project plan, or
- Average number FT employees at the project facility for the 12 month period prior to the submission of the project plan.
Eligibility Requirements cont.

- **New investment** = the value of real and depreciable personal property, acquired as part of the new or expanding facility project which is used in the operation of the facility following conditional approval of an exemption.

Note: Conditional approval, then acquisition.
The benefits under the program include:

- An exemption on state and local sales taxes spent for expanding operations or 100% of state and local sales and use taxes for a new facility.

- Taxes defined, levied, or calculated under section 32.085, sections 144.010-144.525, sections 144.600-144.761 or section 238.235, for a project period not to exceed 10 years for expanding facilities and 15 years for new facilities, limited to the net fiscal benefit of the state calculated over a ten year period on:
Expanded Facility - Incremental Usage

- Electric energy, gas, water, and other utilities including telecommunications used in the data storage center;
- All machinery, equipment and computers used in any expanding data storage center; and
- All sales at retail of tangible personal property and materials for the purpose of constructing, repairing, or remodeling any expanding data storage center.

- The calculation of benefit is based upon units of measure: kilowatt hours, gallons, cubic feet or other applicable measures as opposed to dollars (to account for increases in utility rates).
What types of benefits are included, continued

New Facility – New Usage

▪ Electric energy, gas, water, and other utilities including telecommunications used in the data storage center;
▪ All machinery, equipment and computers used in any new data storage center; and
▪ All sales at retail of tangible personal property and materials for the purpose of constructing any new data storage center.

▪ The calculation of benefit is based upon dollars spent.
The exemption is limited to the net fiscal benefit of the state calculated over a 10-year period as determined by DED using the Regional Economic Modeling, Inc (REMI) data set;

REMI is an economic modeling tool, calibrated annually to the state’s budget which incorporates regional wage, construction, and economic data.

REMI will be used to determine a cost benefit and the point at which there is a fiscal return to the state’s General Revenue based on project inputs (jobs and investment) and costs (sales tax exemptions) by year.
Who is the applicant?

- A **taxpayer** is the purchaser of tangible personal property or a service that is subject to state or local sales or use tax and from who state or local sales or use tax is owed.
- A **taxpayer** shall not mean the seller charged by law with collecting the sales tax from the purchaser.
- **Project taxpayers** may file a Notice of Intent with DED.
- **Project taxpayers** are each constructing **taxpayer** and each **operating taxpayer** for a data storage center project.
Who is the applicant, continued

- **A constructing taxpayer** is the taxpayer responsible for the construction of the facility (if there is more than one taxpayer in the project);
- **An operating taxpayer** is the taxpayer responsible for the ongoing operations of the facility (if there is more than one taxpayer in the project).
- If more than one taxpayer is responsible for a project, the investment requirement may be met by an operating taxpayer, a constructing taxpayer, or a combination of both.
Process from NOI to initial refund

1. NOI conditional approval & agreement signed
2. Project taxpayer(s) make investment & hire jobs for eligibility
3. Project taxpayer(s) meet thresholds & all conditions in the NOI conditional approval
4. Project taxpayer(s) submit & DED/DOR approves Verification of Eligibility Thresholds
5. DOR issues refund within 30 days of certification (back to start of construction, if requested).
6. Investment qualifies for exemption
7. Investment prior to NOI (No investment prior to 8/28/2015 or start of construction whichever is later, will qualify for exemption
At the end of each calendar year (no later than Jan. 31), the project taxpayer(s) submit(s) an annual report. DED reviews and approves. DOR issues an exemption for the following year.
There are 30 day timeframes built into DED and DOR’s actions in the approval process.

The commencement of the exemption period may be delayed at the option of the operating taxpayer but not more than 24 months from the execution of the agreement.
A certificate in the hands of a taxpayer that is no longer an operating or constructing taxpayer of the new or expanding project facility shall be invalid.

New certificates of exemption shall be issued to successor taxpayers at such new or expanding facility projects.

The right to successor taxpayers shall exist without regard to subsequent levels of investment in the new or expanding facility.
Any project taxpayer who submits a notice of intent to DED to expand a new facility by additional construction, extension, improvement or equipping within 5 years of the date the new facility became operational shall be entitled to request DED undertake additional analysis to determine net fiscal benefit over 10 years and shall be entitled to an exemption not to exceed the fiscal benefit for a period of not to exceed 15 years.
No recipient of an exemption under the data center program may also receive other business recruitment incentives.

As such, DED will analyze the potential benefits of other incentives for any project, upon request.
Is there a minimum square footage requirement for a new data center to qualify?
- No. The taxpayer would just have to meet and document the investment requirements.

Is there a but/for clause?
- No. There are limits on the expenditures and timing of the exemption.

Is there a local participation requirement?
- The statute exempts local sales tax if DED approves the project. (RSMo 144.810 2.)
If office space is added to an existing data center, can the exemption be used to build the office space and renovate the data center?

No. The company would not be expanding the operations of the data center, as required by RSMo 144.810 1.(6)
If a project is currently underway, but not finished, can the exemption be used on the remaining costs?

- This facility would be considered an expanding facility (if otherwise eligible).
- Investment can count for eligibility thresholds after the NOI is approved.
- Company can get an exemption on all investment for the project, even prior to the NOI, once the threshold amount has been met.
In a multi-tenant data center, can there be more than one applicant for benefits?

- *The program is facility based, so there could be multiple “operating taxpayers” at a single facility but they would share a single set of exemptions (one application to DED).*

If the users met the job creation/investment thresholds separately, could they get separate exemptions?

- *No. The program is facility based. There would likely be an agreement between the taxpayers in question to divvy up the value of the exemption.*
Can the data center exemption be used in conjunction with Chapter 100 bonds?

- **Personal Property** -- the data center exemption covers the sales and use tax already, so the Ch100 would not appear to be helpful.

- **Real property** -- the data center exemption does not cover real property, therefore Ch100 may be an applicable tool.
Scenario: A data center has received its certificate for exemption, and is in the process of receiving benefits.

Does the certificate for exemption stay with the taxpayer or stay with the facility?

- The exemption stays with the facility (RSMo 144.810.6.(1))
Q & A

- Can this exemption be layered with local incentives?
  - Yes
- Is the “constructing taxpayer” the contractor or the owner of the site?
  - "Constructing taxpayer" is the taxpayer responsible for the construction of the facility...
  - So could be either one depending on the structure of the project. However, likely it would be the owner unless there was an agreement worked out between the owner and the contractor.
Could a new project be initiated in year 6 of benefits?

- Yes. *Thresholds would have to be met with each new project.*

Is phasing allowed?

- Yes. *The first NOI job and investment projections would have to be met. Those projected numbers would become the base for NOI #2.*
Q & A

- Is there a contract between DED and the constructing and operating taxpayers?
  - Yes.

- Are there clawbacks associated with failure to meet the projected number of jobs and investment amounts?
  - Yes. The taxpayer(s) must maintain jobs and create the investment, since the award is based on a positive cost/benefit analysis.
Can the unused portion of a tax exemption certificate be rolled into another year?

No. The tax certificates are issued annually. The allocated exemptions must be used in the year they were issued and cannot be rolled into subsequent years.
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