
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #13-5

SUBJECT: Datacenter Computers, Computer Equipment, Computer Hardware and Software, and Electricity
(Sales and Use Taxes)

EFFECTIVE DATE: June 7, 2012

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-36-2120(79) (Supp. 2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2012)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION:

In 2012, the General Assembly enacted a sales and use tax exemption for computers, computer equipment, computer hardware, and computer software used within a datacenter that meets certain requirements. The exemption also applies to electricity used by the datacenter and property used for the generation, transformation, transmission, distribution, or management of electricity located and used at the datacenter.

The purpose of this advisory opinion is to address various issues related to this new exemption.

LAW:

Code Section 12-36-2120(79) exempts from the sales and use tax:

(A)(1) original or replacement computers, computer equipment, and computer hardware and software purchases used within a datacenter; and

(2) electricity used by a datacenter and eligible business property to be located and used at the datacenter. This subsubitem does not apply to sales of electricity for any other purpose, and such sales are subject to the tax, including, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters and waste house lights.

(B) As used in this section:

(1) 'Computer' means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) 'Computer equipment' means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research. This also includes equipment cooling systems for managing the performance of the datacenter property, including mechanical and electrical equipment, hardware for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and systems.

(3) 'Computer software' means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(4) 'Concurrently maintainable' means capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment.

(5) 'Datacenter' means a new or existing facility at a single location in South Carolina:

(i) that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable and to include redundant capacity components and multiple distribution paths serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time;

(ii)(a) where a taxpayer invests at least fifty million dollars in real or personal property or both over a five year period; or

(b) where one or more taxpayers invests a minimum aggregate capital investment of at least seventy-five million dollars in real or personal property or both over a five year period;

(iii) where a taxpayer creates and maintains at least twenty-five full-time jobs at the facility with an average cash compensation level of one hundred fifty percent of the per capita income of the State or of the county in which the facility is located, whichever is lower, according to the most recently published data available at the time the facility is certified by the Department of Commerce;

(iv) where the jobs created pursuant to subitem (B)(5)(iii) are maintained for three consecutive years after a facility with the minimum capital investment and number of jobs has been certified by the Department of Commerce; and

(v) which is certified by the Department of Commerce pursuant to subitem (D)(1) under such policies and procedures as promulgated by the Department of Commerce.

(6) 'Eligible business property' means property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes.

(7) 'Multiple distribution paths' means a series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths.

(8) 'Redundant capacity components' means components beyond those required to support the computer equipment.

(C)(1) To qualify for the exemption allowed by this item, a taxpayer, and the facility in the case of a seventy-five million dollar investment made by more than one taxpayer, shall notify the Department of Revenue and Department of Commerce, in writing, of its intention to claim the exemption. For purposes of meeting the requirements of subitems (B)(5)(ii) and (B)(5)(iii), capital investment and job creation begin accruing once the taxpayer notifies each department. Also, the five-year period begins upon notification.

(2) Once the taxpayer meets the requirements of subitem (B)(5), or at the end of the five-year period, the taxpayer shall notify the Department of Revenue, in writing, whether it has or has not met the requirements of subitem (B)(5). The taxpayer shall provide the proof the department determines necessary to determine that the requirements have been met.

(D)(1) Upon notifying each department of its intention to claim the exemption pursuant to subitem (C)(1), and upon certification by the Department of Commerce, the taxpayer may claim the exemption on eligible purchases at any time during the period provided in Section 12-54-85(F), including the time period prior to subitem (B)(5)(iv) being satisfied.

(2) For purposes of this section, the running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for:

(i) the time period beginning with notice to each department pursuant to subitem (C)(1) and ending with notice to the Department of Revenue pursuant to subitem (C)(2); and

(ii) during the three year job maintenance requirement pursuant to subitem (B)(5)(iv).

(E) Any subsequent purchase of or investment in computer equipment, computer hardware and software, and computers, including to replace originally deployed computer equipment or to implement future expansions, likewise shall qualify for the exemption provided in this subitem, regardless of when the taxpayer makes the investments.

(F)(1) If a taxpayer receives the exemption for purchases but fails to meet the requirements of subitem (B)(5) at the end of the five-year period, the department may assess any state or local sales or use tax due on items purchased.

(2) If a taxpayer meets the requirements of subitem (B)(5), but subsequently fails to maintain the number of full-time jobs with the required compensation level at the facility, as previously required pursuant to subitem (B)(5)(iii), the taxpayer is:

(i) not allowed the exemption for items described in subitem (A)(1) until the taxpayer meets the previous qualifying jobs requirements pursuant to subitem (B)(5)(iii); and

(ii) allowed the exemption for electricity pursuant to subitem (A)(2), but the exemption only applies to a percentage of the sale price, calculated by dividing the number of qualifying jobs by twenty-five.

(G) This subitem only applies to a datacenter that is certified by the Department of Commerce pursuant to subitem (D)(1) prior to January 1, 2032. However, this item shall continue to apply to a taxpayer that is certified by December 31, 2031, for an additional ten year period. Upon the end of the ten year period, this subitem is repealed.

QUESTIONS AND ANSWERS:

Datacenter Requirements

1. Q. What is a datacenter for purposes of the sales and use tax exemption in Code Section 12-36-2120(79)?
 - A. A “datacenter” for purposes of the sales and use tax exemption in Code Section 12-36-2120(79) is a new or existing facility at a single location in South Carolina that provides infrastructure for hosting or data processing services and that has power and cooling systems that are created and maintained to be concurrently maintainable¹ and to include redundant capacity components² and multiple distribution paths³ serving the computer equipment at the facility. Although the facility must have multiple distribution paths serving the computer equipment, a single distribution path may serve the computer equipment at any one time (Code Section 12-36-2120(79)(B)(5)).

2. Q. What investment and job requirements are required in order to qualify for the exemption in Code Section 12-36-2120(79)?
 - A. The taxpayer must:
 - (a) invest, in the datacenter, at least \$50 million in real or personal property or both over a five year period. (Note: If there is more than one taxpayer investing in the datacenter, these taxpayers must make an aggregate capital investment, at the datacenter, of at least \$75 million in real or personal property or both over a five year period.) (Code Section 12-36-2120(B)(5)(ii));

 - (b) create and maintain, at the datacenter, at least 25 full-time jobs with an average cash compensation level of the lower of 150% of per capita income of South Carolina or 150% of the per capita income of the county in which the datacenter is located. Such jobs must be created within the five year period. (Note: The per capita income is based on the most recently published data available at the time the datacenter is certified by the Department of Commerce.) (Code Section 12-36-2120(B)(5)(iii)); and,

 - (c) maintain the 25 jobs created at the datacenter for three consecutive years after the datacenter has been certified as having met the investment and jobs requirements. (Code Section 12-36-2120(79)(B)(5)(iv)). See Question #21.

¹ “Concurrently maintainable” means capable of having any capacity component or distribution element serviced or repaired on a planned basis without interrupting or impeding the performance of the computer equipment (Code Section 12-36-2120(79)(B)(4)).

² “Redundant capacity components” means components beyond those required to support the computer equipment (Code Section 12-36-2120(79)(B)(8)).

³ “Multiple distribution paths” means a series of distribution paths configured to ensure that failure on one distribution path does not interrupt or impede other distribution paths (Code Section 12-36-2120(79)(B)(7)).

Note: The taxpayer or facility must notify the Department of Revenue in writing at the above address once it meets the definitional requirements of a datacenter found in Code Section 12-36-2120(79)(B)(5) (which includes the investment and jobs creation requirements), or at the end of the five year investment period, that it has or has not met these requirements.

Tangible Personal Property Eligible for the Datacenter Exemption

3. Q. What purchases of tangible personal property by a taxpayer for use at a qualifying datacenter are exempt from the tax?
 - A. The following purchases for use at a qualifying datacenter are exempt from the sales and use tax:

Computers

“Computers” are electronic devices that accept information in digital or similar form and manipulate it for a result based on a sequence of instructions (Code Section 12-36-2120(79)(B)(1)).

Computer equipment

“Computer equipment” means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research. This also includes equipment cooling systems for managing the performance of the datacenter property, including mechanical and electrical equipment, hardware for distributed and mainframe computers and servers, data storage devices, network connectivity equipment, and peripheral components and systems (Code Section 12-36-2120(79)(B)(2)).

Computer software

“Computer software” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task (Code Section 12-36-2120(79)(B)(3)).

Electricity

Eligible business property

“Eligible business property” is property used for the generation, transformation, transmission, distribution, or management of electricity, including exterior substations and other business personal property used for these purposes (Code Section 12-36-2120(79)(B)(6)).

Note: The exemption applies to any subsequent purchase of computer equipment, computer hardware and software, and computers, including to replace originally deployed computer equipment or to implement future expansions (Code Section 12-36-2120(79)(E)).

4. Q. Are replacement parts and repair parts for computers, computer equipment, and eligible business property that qualify for the exemption also exempt from the tax?
- A. Yes, Purchases of replacement parts and repair parts for computers, computer equipment, and eligible business property that qualify for the exemption also qualify for the exemption (Code Section 12-36-2120(79)(A)(1) and (B)(2)).
5. Q. Is all electricity used at a qualifying datacenter exempt?
- A. No. The exemption for electricity only applies to electricity used in the datacenter. Examples of places where the use of electricity is not exempt include:

- administrative offices
- cafeterias
- canteens
- comfort air conditioning
- drink boxes
- elevators used in carrying personnel
- first aid rooms
- maintenance shops
- parking lots
- safety control
- storage warehouses
- supervisory offices
- supply rooms
- unit heaters
- waste house lights
- water coolers

See Code Section 12-36-2120(79)(A)(2).

Note: If a taxpayer meets the definitional requirements of a “datacenter” in Code Section 12-36-2120(79)(B)(5), but subsequently fails to maintain the number of full-time jobs with the required compensation level at the facility as required in Code Section 12-36-2120(79)(B)(5)(iii), the taxpayer is still allowed the exemption for electricity, but the exemption only applies to a percentage of the sale price, calculated by dividing the number of qualifying jobs by twenty-five. (See Code Section 12-36-2120(79)(F)(2).)

Notification Requirements

6. Q. When and how must a taxpayer notify the Department of Revenue and the Department of Commerce of the taxpayer’s intent to start using the exemption?

- A. Before a taxpayer or a facility may use the exemption, the taxpayer or facility must notify the Department of Revenue and the Department of Commerce (Code Section 12-36-2120(79)(C)(1)). The notification must be **in writing** and mailed to the following two addresses

S.C. Department of Revenue
Taxpayer Services & Operations
License and Registration Unit
P.O. Box 125
Columbia, S.C. 29214-0140

S.C. Department of Commerce
Datacenter Notification
1201 Main Street, Suite 1600
Columbia, SC 29201-3200

The written notice should include the taxpayer's name, address, retail license number or use tax registration number, the location of records, a brief description of the qualifying investment and job creation, a brief description of property claimed to be exempt from tax and where it will be used, the name and addresses of each taxpayer investing in the facility (if more than one), and the name and telephone number of a person to contact with respect to the exemption.

Important Note: The taxpayer or facility must also notify the Department of Revenue in writing at the above address once it meets the definitional requirements of a datacenter found in Code Section 12-36-2120(79)(B)(5) (which includes the investment and jobs creation requirements), or at the end of the five year investment period, that it has or has not met these requirements. The taxpayer or facility must provide proof the Department of Revenue determines necessary to determine that the requirements have been met. The taxpayer is not required to send this second notice – that it has or has not met the definitional requirements of Code Section 12-36-2120(79)(B)(5) – to the Department of Commerce.

Exemption - Effective Dates, Usage, and Exemption Certificate

7. Q. When may the taxpayer first use the exemption?

- A. The exemption is available to the taxpayer when the taxpayer notifies both the Department of Revenue and the Department of Commerce of its intent to make the required investment and create and maintain the required number of jobs and the datacenter has been certified by the Department of Commerce.

Note: The Department of Revenue, under its authority in Code Section 12-36-2510 and for the efficient administration of this exemption, will issue an exemption certificate to the taxpayer for use in purchasing items exempt under this exemption.

8. Q. Is the sales and use tax exemption limited to one specific datacenter facility?
- A. Yes. The exemption applies only to computers, computer equipment, computer software, electricity, and eligible business property purchased for use at a specific datacenter facility that meets all the requirements of the exemption (Code Section 12-36-2120(79)(A) and (B)(5)).
9. Q. How long is the datacenter sales and use tax exemption available?
- A. The datacenter sales and use tax exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032. If a datacenter is certified by December 31, 2031, the exemption will remain in effect for an additional ten year period until December 31, 2041. Upon the end of the ten year period, the exemption is repealed and no further exemption is allowed (Code Section 12-36-2120(79)(G)).
10. Q. What must the taxpayer present to suppliers to make tax-exempt purchases under the exemption?
- A. The Department will issue an exemption certificate to the taxpayer or facility. This certificate is to be presented to suppliers to make qualifying tax-exempt purchases.
11. Q. Who will be held liable for any taxes due if the certificate is used to make purchases that do not come within the exemption - the supplier or the purchaser?
- A. If the certificate is used to make purchases tax-free that do not come within the exemption, then the purchaser, not the supplier, will be held liable for any taxes, interest and penalties due.
12. Q. Is there a time limitation in which the Department may assess sales and use taxes on purchases that do not come within the requirements of the datacenter exemption?
- A. The statutory time limitations for assessing taxes under Code Section 12-54-85 apply. However, the running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for:
- (a) the time period beginning with initial notice to each department (Department of Revenue and Department of Commerce) required under Code Section 12-36-2120(79)(C)(1) and ending with notice to the Department of Revenue required under Code Section 12-36-2120(79)(C)(2); and
 - (b) during the three year job maintenance requirement required under Code Section 12-36-2120(79)(B)(5)(iv).

See Code Section 12-36-2120(79)(D)(2).

Investment Requirements

13. Q. When does the five-year investment period begin?
- A. The five year investment period begins on the date the taxpayer or facility notifies the Department of Revenue and the Department of Commerce of its intent to use the exemption and upon certification by the Department of Commerce (Code Section 12-36-2120(79)(C)(1)).
14. Q. What expenditures meet the investment requirement?
- A. The investment is limited to real or personal property at the single datacenter facility in South Carolina. This includes expenditures for:
- buildings
 - computers
 - computer equipment
 - equipment
 - fixtures
 - furniture
 - infrastructure development (roads, water, sewer, etc.)
 - land
 - machinery
 - office equipment (computers, copiers, and similar office equipment)
 - site preparation

Expenditures for employee wages, employee benefits, taxes, raw material and inventory are examples of expenditures that do **not** meet the investment requirement.

15. Q. Is it required that the investment must be made at the location of the datacenter facility?
- A. Yes (Code Section 12-36-2120(79)(B)(5)).
16. Q. If the taxpayer operating the datacenter has related entities (*e.g.*, subsidiary corporations), are investments by these related entities of the taxpayer at the datacenter included in determining if the taxpayer has met the investment requirement under the exemption?
- A. Yes; however, the investment requirement is \$75 million (instead of \$50 million) where more than one taxpayer is investing in the datacenter (Code Section 12-36-2120(79)(C)(1)).

Job Requirements

17. Q. How many jobs must be created and maintained at the datacenter for the taxpayer or facility to qualify for the datacenter exemption?

- A. The taxpayer must create and maintain at least 25 full-time jobs at the datacenter facility to qualify for the datacenter exemption (Code Section 12-36-2120(79)(B)(iii)). These jobs must meet certain compensation requirements as discussed in Question #18.

18. Q. What compensation requirements must be met in order for the jobs to qualify?

- A. 1. At least 25 jobs must be full-time jobs. "Full-time" means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of company operations (Code Section 12-36-2120(79)(B)(iii)).

2. The 25 full-time jobs must have an average cash compensation level of 150% of the per capita income of the State or of the county in which the datacenter facility is located, whichever is lower. The determination of the per capita income is based on the most recently published data available at the time the facility is certified by the Department of Commerce (Code Section 12-36-2120(79)(B)(iii)).

3. The 25 full-time jobs must be maintained for three consecutive years after the datacenter facility has been certified as having met the investment and jobs requirements. (Code Section 12-36-2120(79)(B)(5)(iv)). See Question #2.

Note: The taxpayer or facility must notify the Department of Revenue in writing at the above address once it meets the definitional requirements of a datacenter found in Code Section 12-36-2120(79)(B)(5) (which includes the investment and jobs creation requirements), or at the end of the five year investment period, that it has or has not met these requirements. The taxpayer or facility must provide proof the Department of Revenue determines necessary to determine that the requirements have been met.

19. Q. Must the 25 full-time jobs be maintained for 3 consecutive years after the 5 year investment period ends?

- A. No. The jobs must be created during the 5 year investment period, but they do not have to be maintained for 3 consecutive years prior to the end of the 5 year investment period. Once the jobs have been created and the taxpayer has met the minimum dollar investment requirement within the 5 years, then the taxpayer must maintain the 25 jobs for 3 consecutive years from that point.

For example:

- (a) If a taxpayer notifies the Department of its intent to use the exemption on January 1, 2013 and it takes until December 31, 2017 (the full 5 years allowed) to meet the investment requirement and to create at least 25 jobs meeting the requirements of the exemption, then the taxpayer must maintain those 25 jobs for 3 consecutive years – 2018, 2019, and 2020.

- (b) If a taxpayer notifies the Department of its intent to use the exemption on January 1, 2013 and it takes 3 years (until December 31, 2015) to meet the investment requirement and to create at least 25 jobs meeting the requirements of the exemption, then the taxpayer must maintain those 25 jobs for 3 consecutive years – 2016, 2017, and 2019.
- (c) If a taxpayer notifies the Department of its intent to use the exemption on January 1, 2013 and it takes 1 year and 6 months (until June 30, 2014) to meet the investment requirement and to create at least 25 jobs meeting the requirements of the exemption, then the taxpayer must maintain those 25 jobs for 3 consecutive years from July 1, 2014 until June 30, 2017.

Failure to Meet Investment and Job Requirements

20. Q. What happens if the taxpayer fails to meet the investment and job requirements of the datacenter exemption?

- A. If a taxpayer receives the exemption for purchases but fails by the end of the five-year period to meet the investment requirement, or fails by the end of the five-year period to create at least 25 full-time jobs meeting the average cash compensation level set forth in the exemption statute, the department may assess any state or local sales or use tax due on items purchased.

If a taxpayer meets the investment and job requirements within the five-year period, but subsequently fails to maintain the number of full-time jobs with the required compensation level at the facility, as required under Code Section 12-36-2120(79)(B)(5)(iii), the taxpayer is:

- (a) not allowed the exemption for items described in Code Section 12-36-2120(79)(A)(1) until the taxpayer meets the previous qualifying jobs requirements under Code Section 12-36-2120(79)(B)(5)(iii); and
- (b) allowed the exemption for electricity under Code Section 12-36-2120(79)(A)(2), but the exemption only applies to a percentage of the sale price, calculated by dividing the number of qualifying jobs by twenty-five.

See Code Section 12-36-2120(79)(F).

Records

21. Q. What records must taxpayers keep with respect to this exemption?

- A. Taxpayers must substantiate they have met the investment requirement and the job requirements. Like other records maintained for tax purposes, the records must be readily available for inspection by the Department. Examples of records that must be maintained are real estate closing documents, building contracts, purchase invoices with evidence of payment, and payroll records. These records must be maintained during the statutory time period in which the Department may assess taxes as discussed in Question #12.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume, Jr.

William M. Blume, Jr., Director

August 25, 2013
Columbia, South Carolina