Kentucky's Data Center Tax Incentive: What Hyperscale Developers Need to Know (Part 5)

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With an understanding of taxes in hand, now we talk QDCs, as in qualified data centers. One of the points in favor of Kentucky being a great place for hyperscale data centers traces to legislation enacted by the Kentucky Legislature in 2024 and 2025.

This is known as the "Qualified Data Center Project" or QDC legislation. 2024 H.B. 8, 2024 Ky. Acts. Ch. 166; 2025 H.B. 775, 2025 Ky. Acts Ch. 98.[1]

The QDC legislation grants a targeted sales and use tax exemption on specified items, essentially everything needed to build and outfit a data center, in return for qualified participants making incredibly large capital expenditures — a minimum of $450 million per qualified project, or $100 million or $25 million if in smaller counties. In effect, the legislation is a targeted tax exemption, no different from past legislation designed to incentivize large expenditures in furtherance of promoting the economy of Kentucky. Other examples of this type of legislation are readily found in Kentucky's tax code, providing for sales tax refunds, credits, or exemptions for various industries — such as communications, qualified attractions, qualifying signature redevelopment projects, interstate business communication services, and aircraft fuel.

No minimum full-time equivalent job or payroll-level requirements are set forth in the QDC legislation, no minimum construction jobs or payroll levels are imposed, no minimum economic impact or economic impact study is required, and no discussion of the overall tax treatment of such a project is discussed in the QDC legislation. In other words, it is a stand-alone tax exemption provision in return for significant CapEx investment, all designed to stimulate economic conditions.

Again, legislative intent is expressly stated, with the Kentucky Legislature noting that the inducement and location of data center projects within the Commonwealth "is of paramount importance to

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the economic well-being of the Commonwealth." Again, powerful legislative intent, which would suggest flexibility and a business-minded approach to implementing the QDC legislation is not only sought, but expected, by the Legislature.

From a policy perspective, the QDC legislation, which can be effective for projects up to 50 years in duration, is an outgrowth of a provision of Kentucky law that could otherwise be seen as requiring sales and use tax to be paid on all necessary expenditures required to fully outfit and ready a hyperscale data center for production. Kentucky law only allows a business to purchase its machinery and equipment, technology, and necessary components free of a sales tax if the involved taxpayer is a manufacturer or industrial processor. By legislating as it did via the QDC legislation, the Legislature made it clear that all tangible personal property necessary for a data center to be built and operational should be free of Kentucky sales and use tax.

Now, one may ask if a data center is a manufacturer or processor of digital data creating a digital product, why would you need the QDC legislation to begin with? A fair question, and the answer is found in KRS 139.010(22)(b), which provides that "repair and replacement" of tangible personal property used in a manufacturing facility or processing facility would be fully subject to tax. In other words, *but for* the QDC legislation, Kentucky would only allow the first round (initial buildout) of machinery and equipment, technology components, etc., to be free from Kentucky sales and use tax. And we know that data centers have to replace equipment, servers and the like every three to five years or so. This legislation merely supersedes that rule as it relates solely to a QDC project. So, in no way can the legislation be looked at as support for the premise that data center operations should not be treated as manufacturing or processing operations or facilities.

Notably, the QDC legislation bars any taxpayer which is currently utilizing the sales and use tax exemption on energy purchases for use in cryptocurrency mining from participating in the QDC incentive. One could ask why, and the answer is that the crypto-mining industry had already been incented to locate and expand in Kentucky through a full exemption from the 9% state and local

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school excise tax on energy by KRS 139.516 and 160.613(1)(c). Thus, there would be no need to further incentivize that industry.

Next up in our series on data center development in Kentucky, more detail on the QDC incentive legislation and specifically various positions and processes currently in place at the Kentucky Cabinet for Economic Development concerning the QDC program.

Please contact the author if you have questions or comments on this series. You can also visit FBT Gibbons' Tax Law Defined® Blog for more insight into the latest developments in federal, state, and local tax planning and tax administration.

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[1] Codified at KRS 154.20-220 *et seq*; *see also* KRS 139.499.

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