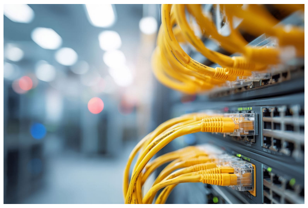

Kentucky-Based AI Data Centers — Let's Talk Incentives (Part 6)

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In prior posts we have addressed many topics, most recently the QDC — Kentucky's qualified data center tax incentive legislation created in 2024. Now we address the how, when, and where concerning qualifying for the QDC sales tax benefit.

Tax breaks for economic development projects are generally managed through an executive branch agency created at KRS 12.020(II)(5) and KRS 154.12.050, *et seq*. and known as the Kentucky Cabinet for Economic Development (KCED). KCED is the driving force behind the application and approval process concerning the QDC legislation. Once a "deal" is reached, meaning KCED is satisfied that the involved data center project qualifies under the QDC legislation, a proposal is put before the governing body which formally awards the tax exemption incentive, the Kentucky Economic Finance Authority Development Board or KEDFA (*see* KRS 154.10-010 *et seq*.) KEDFA has the final word on approval of the QDC incentive.

As it does with all statutory incentives, KCED manages the information flow with the public, oftentimes using a "one-pager" format to introduce the involved statutory incentive to the public, via postings on its website. Over the last several months, KCED has posted several "one-pagers" concerning the QDC, the most recent iteration of which can be found here.

Reviewing this summary, one can see the multitude of preparatory steps that need to occur, according to KCED, before an application can move forward for approval by KEDFA.

Current requirements imposed by KCED as to a data center project seeking the sales tax exemption for qualified data centers include significant community engagement, an economic impact study of the project, a multitude of financial disclosures, a formal letter of support by the involved lead governmental agency (county or city, etc.), formal support and impact representation letters by the involved utilities as to any impact thereon, and still more.

While the QDC statutes authorize KEDFA to "establish procedures and standards for the review and approval of eligible companies and their data center projects through the promulgation of administrative regulations," no such administrative regulations concerning the QDC have been promulgated or advanced to date by KCED or KEDFA. Thus, these administrative requirements are being imposed without formal regulatory support. Nonetheless, they are representative of the current KCED and KEDFA policy and should be complied with in order to advance a successful application.

As of this writing, no data center project in Kentucky has been granted preliminary approval of its QDC application, though according to recent reports, there are over 30 discrete data center projects currently underway in one form or another across the Commonwealth, and utility providers have publicly disclosed the data center projects in their pipelines — with over 11 of those projects having a more than 50% probability of moving forward.

Businesses seeking the QDC exemption incentive should be prepared for reasonable due diligence by KCED with respect to any application brought forward. Best practices would include initial consultation with KCED officials at the earliest point in order to start the multi-month process leading toward preliminary approval by the KEDFA board. It is relatively common after initial submission for KCED officials to review and follow up multiple times with information requests and explanatory-type questions throughout its processing of any statutory incentive program managed by KCED. So, the QDC approval process is no different from the norm, notwithstanding the scope and scale of projects such as hyperscale AI-centric data centers. **Best counsel:** Communicate early and often and start the process as soon as you can from a feasibility standpoint.

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.

Bluegrass, Big Data Series

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