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Services

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Expansion of the Sales and Use Tax Data Center Exemption by Act 548 of 2025 Arkansas General Assembly

Act 548 of 2025 amends and expands the sales and use tax data center exemption, making the following key changes:

- Easing the criteria for Qualified Data Centers;
- Allowing Qualified Large Data Centers that span multiple locations;
- Expanding the exemption to include ancillary equipment and services; and
- Shifting compliance enforcement from the Arkansas Economic Development Commission (“AEDC”) to the Department of Finance and Administration (“DFA”).

The changes should be effective October 1, 2025.

Background

The data center exemption, codified in Arkansas Code Annotated section 26-52-456, encourages the location of data centers in Arkansas. Created by Act 819 of 2023, the exemption has been in effect since October 2023.

The 2025 legislative session was the General Assembly’s first opportunity to amend the exemption after its 2023 enactment and implementation. Act 548 of 2025 (HB1444) was part of the legislative package of the Arkansas Department of Commerce, of which the AEDC is a component. The legislation expands, liberalizes and fine-tunes the data center exemption.

Easing of Qualified Data Center Requirements

Act 548 reduces the investment requirement for a Qualified Data Center from \$500,000,000 to \$100,000,000. The compliance period is still five years, but it now runs from when construction of the facility commences instead of when the certificate of occupancy is issued.

The act notably permits the inclusion of indirect compensation for the purposes of meeting the \$1,000,000 annualized minimum compensation requirement. This includes compensation paid by the contractors of the Qualified Data Center to individuals performing services within the state. The act clarifies that the two years’ minimum compensation applies to the two calendar years following the calendar year in which the facility commenced operations.

The amended definition of a Qualified Data Center excludes cryptocurrency mining—a facility primarily engaged in adding transactions involving virtual currency to a distributed ledger.

The definition of a Qualified Data Center also now includes additions to or expansions of the facility.

Act 548 confirms AEDC's prior interpretation of the data center exemption to the effect that expenditures below the minimum qualified investment thresholds will not themselves be exempt, even if such expenditures otherwise meet the definition of a "qualified investment."

Creation of New Multi-Site Qualified Large Data Center Category

A "qualified large data center" essentially is an interconnected data center comprised of two or more nonadjacent locations: a facility—including any addition to or expansion—developed, acquired, constructed, expanded, rehabilitated, renovated, repaired, or operated to house a group of networked computer servers in two (2) or more nonadjacent physical locations. The locations must be connected to each other by fiber and associated equipment required for operating a fiber transmission network between the location and upstream internet peering points for the qualified firm that owns or operates the facility and its affiliates.

The investment and payroll requirements for classification as a Qualified Large Data Center are greater than those for a Qualified Data Center: The qualified investment required is \$2,000,000,000 within ten years, and the required individual compensation for services performed in Arkansas is \$3,000,000 in the first two calendar years after the facility begins operations.

The advantage of this new classification is that it would allow expenditures for a facility at a nonadjacent location that would not otherwise qualify on its own as a Qualified Data Center to be exempted from the payment of sales and use taxes as a part of the combined Qualified Large Data Center.

Like a Qualified Data Center, a Qualified Large Data Center similarly must receive a positive cost-benefit analysis from the Arkansas Economic Development Commission. And a facility principally engaged in cryptocurrency mining cannot qualify.

For situations where the planned growth is at a new, nonadjacent location, an existing Qualified Data Center can be recertified together with one or more other locations as a Qualified Large Data Center.

Expansion of Purchases Qualifying for Exemption

The data center exemption, as amended, continues to exempt the categories of:

1. Data center equipment;
2. Eligible data center costs;
3. Services purchased for developing, acquiring, constructing, expanding, renovating, refurbishing, and operating a Qualified Data Center—or now also a Qualified Large Data Center; and
4. Electricity used by the Qualified Data Center—or now also a Qualified Large Data Center.

Act 548 expands the definition of "data center equipment" to include purchases stored for future use in the state. It also expressly adds "related equipment and services" to the existing general language about exempting computer equipment or software. The included examples also now include power storage as well as power equipment supporting things other than computer servers.

Transfer of Applications and Compliance to the Arkansas Department of Finance and Administration

The application process and compliance reporting will transfer from AEDC, which is part of the Department of Commerce, to DFA, which administers most state taxes including sales and use taxes. It is our understanding that DFA will create a new program office and make additional hires to staff the program. It is anticipated that filings will be through the Arkansas Taxpayer Access Point (ATAP) website. AEDC will continue to conduct the cost-benefit analysis.

Contacts

Gordon Wilbourn

Little Rock
505.975.3101
gordon.wilbourn@kutakrock.com

Matt Boch

Little Rock
505.975.3196
matt.boch@kutakrock.com

Jacob Hill

Little Rock
505.975.3000
jacob.hill@kutakrock.com

The amendments clarify the timing of the exemption, providing that the exemption may be claimed after the application is approved by DFA, which issues an approved financial incentive certificate.

After an approved financial incentive certificate is received from DFA, an annual certification is required each year for the compensation requirement and when the minimum qualified investment has been met. If the compensation target is missed, then the financial incentive certificate is revoked.

Effective Date and Transition

The Act should be effective October 1, 2025—the start of the first calendar quarter after the effective date of the act, which is 90 days after adjournment of the Arkansas General Assembly *sine die*. There may be forthcoming guidance from DFA and AEDC about the transition to DFA administration of the data center exemption program.

Disclaimer

This memorandum is to provide an overview of Act 548 of 2025 and its impact. It is for general informational purposes only and should not be considered or relied on as a legal opinion of Kutak Rock LLP.

If you have questions, please contact any member of Kutak Rock's [National Tax Practice Group](#). Key contacts for this summary are provided on the left. You may also visit us at www.kutakrock.com.

