

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-1147.01 Esther van Mourik x4215

SENATE BILL 17-299

SENATE SPONSORSHIP

Holbert and Moreno,

HOUSE SPONSORSHIP

Van Winkle and Kraft-Tharp,

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE APPORTIONMENT OF INCOME FOR STATE INCOME**
102 **TAX FOR TAXPAYERS WITH ENTERPRISE DATA CENTERS IN THE**
103 **STATE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill allows a taxpayer that makes a capital investment in an enterprise data center operation in the state of a specified dollar amount within a consecutive 5-year period to enter into a memorandum of understanding with the office of economic development to transition to a different apportionment method for apportioning the income of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
May 2, 2017

taxpayer. The memorandum of understanding must describe the amount of the capital investment and any other investments or actions on the part of the taxpayer that will support the economic development of the state. The bill specifies that a transition schedule must be included in the memorandum of understanding.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 39-22-303.9 as
3 follows:

4 **39-22-303.9. Apportionment of the income of a taxpayer with**
5 **enterprise data center operations in the state - definitions.** (1) AS
6 USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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8 (a) "CAPITAL INVESTMENT" MEANS THE:

9 (I) PURCHASE AND CONSTRUCTION OF REAL ESTATE; OR

10 (II) PURCHASE AND DEPLOYMENT OF CAPITAL EQUIPMENT,
11 MACHINES, BUILDING SYSTEMS, INFRASTRUCTURE, OR OTHER DEPRECIABLE
12 ASSETS, INCLUDING CAPITAL LEASES.

13 (b) "ENTERPRISE DATA CENTER OPERATION" MEANS A BUSINESS
14 THAT:

15 (I) PHYSICALLY HOUSES INFORMATION TECHNOLOGY EQUIPMENT
16 SUCH AS SERVERS, SWITCHES, ROUTERS, DATA STORAGE DEVICES, OR
17 RELATED EQUIPMENT;

18 (II) MANAGES AND PROCESSES DIGITAL DATA AND INFORMATION
19 TO PROVIDE APPLICATION SERVICES OR MANAGEMENT FOR DATA
20 PROCESSING, SUCH AS WEB HOSTING, INTERNET, INTRANET,
21 TELECOMMUNICATION, AND INFORMATION TECHNOLOGY SERVICES;

22 (III) IS OWNED BY A TAXPAYER; AND

23 (IV) IS OPERATED SUBSTANTIALLY FOR THE TAXPAYER'S OWN USE.

1 (c) "OFFICE OF ECONOMIC DEVELOPMENT" OR "OFFICE" MEANS THE
2 COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN SECTION
3 24-48.5-101.

4 (d) "PERSON" HAS THE SAME MEANING AS PROVIDED IN SECTION
5 39-21-101 (3).

6 (e) "TAXPAYER" MEANS A PERSON OR AN AFFILIATED GROUP OF C
7 CORPORATIONS AUTHORIZED TO ELECT TO MAKE A CONSOLIDATED RETURN
8 UNDER SECTION 39-22-305, AND AN AFFILIATED GROUP AS DEFINED IN
9 SECTION 39-22-303 (12).

10 (2) NOTWITHSTANDING ANY PROVISION OF SECTION 39-22-303.5,
11 FOR TAXABLE YEARS COMMENCING ON OR AFTER THE JULY 1 IN THE YEAR
12 IN WHICH THE OFFICE PROVIDES WRITTEN CERTIFICATION TO THE
13 TAXPAYER AND TO THE DEPARTMENT OF REVENUE THAT THE
14 REQUIREMENTS DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION HAVE
15 BEEN MET BY THE TAXPAYER, BUT NO SOONER THAN THE TAXABLE YEAR
16 COMMENCING JULY 1, 2018, PURSUANT TO THE SCHEDULE SET BY THE
17 OFFICE AS DESCRIBED IN SUBSECTION (3)(c)(II) OF THIS SECTION, IN
18 APPORTIONING THE INCOME OF A TAXPAYER WITH ENTERPRISE DATA
19 CENTER OPERATIONS IN THE STATE, SALES FROM SERVICES ARE COLORADO
20 SALES FOR PURPOSES OF SECTION 39-22-303.5 (4)(c)(I) TO THE EXTENT
21 SUCH SALES CONSTITUTE REVENUES FROM SERVICES THAT ARE DELIVERED
22 TO THE TAXPAYER'S CUSTOMER'S LOCATION IN THE STATE, AS
23 DEMONSTRATED BY THE CUSTOMER'S BILLING ADDRESS.

24 (3) (a) EXCEPT AS PROVIDED IN SUBSECTION (3)(d) OF THIS
25 SECTION, IF A TAXPAYER MAKES A CAPITAL INVESTMENT IN AN ENTERPRISE
26 DATA CENTER OPERATION IN THE STATE AS DESCRIBED IN SUBSECTION
27 (3)(b) OF THIS SECTION AND ENTERS INTO A MEMORANDUM OF

1 UNDERSTANDING WITH THE OFFICE AS DESCRIBED IN SUBSECTION (3)(c) OF
2 THIS SECTION, THEN THE TAXPAYER IS AUTHORIZED TO USE THE
3 APPORTIONMENT METHOD SET FORTH IN SUBSECTION (2) OF THIS SECTION
4 PURSUANT TO THE SCHEDULE SET FORTH IN THE MEMORANDUM OF
5 UNDERSTANDING WHEN THE CAPITAL INVESTMENT IS FULLY FUNDED.

6 (b) THE TAXPAYER SHALL MAKE A CAPITAL INVESTMENT IN AN
7 ENTERPRISE DATA CENTER IN THE STATE EQUAL TO AT LEAST ONE
8 HUNDRED FIFTY MILLION DOLLARS WITHIN ANY CONSECUTIVE FIVE-YEAR
9 PERIOD COMMENCING ON OR AFTER JANUARY 1, 2013.

10 (c) (I) THE TAXPAYER SHALL ENTER INTO A MEMORANDUM OF
11 UNDERSTANDING WITH THE OFFICE THAT SETS FORTH:

12 (A) THE AMOUNT OF THE CAPITAL INVESTMENT;

13 (B) THE SPECIFIC CONSECUTIVE FIVE-YEAR PERIOD IN WHICH THE
14 CAPITAL INVESTMENT WILL OCCUR;

15 (C) THE MINIMUM NUMBER OF NET NEW EMPLOYEES THAT WILL BE
16 HIRED BY THE TAXPAYER; AND

17 (D) ANY OTHER INVESTMENTS OR ACTIONS ON THE PART OF THE
18 TAXPAYER THAT WILL SUPPORT THE ECONOMIC DEVELOPMENT OF THE
19 STATE.

20 (II) THE MEMORANDUM OF UNDERSTANDING MUST INCLUDE A
21 SCHEDULE, TO BE SET BY THE OFFICE, THAT INCREMENTALLY TRANSITIONS
22 THE TAXPAYER, OVER A PERIOD NOT TO EXCEED EIGHT YEARS, TO THE
23 APPORTIONMENT METHOD DESCRIBED IN SUBSECTION (2) OF THIS SECTION.

24 (III) WHEN NEGOTIATING THE TERMS OF THE MEMORANDUM OF
25 UNDERSTANDING WITH THE TAXPAYER, THE OFFICE MAY SEEK INPUT FROM
26 THE DEPARTMENT OF REVENUE. THE DEPARTMENT OF REVENUE SHALL
27 PROVIDE TAXPAYER-SPECIFIC INFORMATION THAT WILL ASSIST THE OFFICE

1 IN SETTING THE TERMS OF THE MEMORANDUM OF UNDERSTANDING.
2 NOTWITHSTANDING SECTION 39-21-113, IT IS LAWFUL FOR THE
3 DEPARTMENT OF REVENUE TO PROVIDE SUCH TAXPAYER-SPECIFIC
4 INFORMATION TO THE OFFICE. THE OFFICE SHALL NOT DISCLOSE
5 TAXPAYER-SPECIFIC INFORMATION TO THE PUBLIC THAT IT RECEIVES
6 PURSUANT TO THIS SUBSECTION (3)(c)(III) AND SUBSECTION (3)(c)(V) OF
7 THIS SECTION AND SHALL KEEP SUCH TAXPAYER-SPECIFIC INFORMATION
8 CONFIDENTIAL. ALL EMPLOYEES OF THE OFFICE ARE SUBJECT TO THE
9 LIMITATIONS SET FORTH IN SECTION 39-21-113 (4) AND THE PENALTIES SET
10 FORTH IN SECTION 39-21-113 (6).

11 (IV) (A) THE MEMORANDUM OF UNDERSTANDING MUST BE SIGNED
12 BY THE OFFICE AND THE TAXPAYER NO LATER THAN ONE YEAR AFTER THE
13 LAST YEAR OF THE CONSECUTIVE FIVE-YEAR CAPITAL INVESTMENT PERIOD
14 DESCRIBED IN SUBSECTION (3)(b) OF THIS SECTION.

15 (B) WHEN THE TAXPAYER FULLY FUNDS THE CAPITAL INVESTMENT
16 AND SIGNS THE MEMORANDUM OF UNDERSTANDING, THE OFFICE SHALL
17 PROVIDE WRITTEN CERTIFICATION TO THE TAXPAYER AND THE
18 DEPARTMENT OF REVENUE THAT THE REQUIREMENTS DESCRIBED IN
19 SUBSECTION (3)(a) OF THIS SECTION HAVE BEEN MET BY THE TAXPAYER
20 AND THE TAXPAYER SHALL ATTACH A COPY OF THE SIGNED MEMORANDUM
21 OF UNDERSTANDING WITH ITS TAX RETURN IN ORDER TO PROVIDE THE
22 DEPARTMENT OF REVENUE WITH THE TRANSITION SCHEDULE DESCRIBED
23 IN SUBSECTION (3)(c)(II) OF THIS SECTION FOR THE APPORTIONMENT
24 METHOD.

25 (V) THE TAXPAYER SHALL PROVIDE ANY INFORMATION REQUIRED
26 BY THE OFFICE FOR THE OFFICE TO DETERMINE COMPLIANCE WITH THE
27 TERMS OF THE MEMORANDUM OF UNDERSTANDING.

1 (VI) THE OFFICE AND THE DEPARTMENT OF REVENUE HAVE THE
2 RIGHT TO AUDIT COMPLIANCE WITH THE MEMORANDUM OF
3 UNDERSTANDING AND REVIEW ANY INFORMATION PROVIDED BY THE
4 TAXPAYER PURSUANT TO THE MEMORANDUM OF UNDERSTANDING OR
5 REQUESTED BY THE OFFICE AS ALLOWED UNDER SUBSECTION (3)(c)(V) OF
6 THIS SECTION.

7 (d) IF THE TAXPAYER FAILS TO FULLY FUND THE CAPITAL
8 INVESTMENT OR FAILS TO FULFILL THE OBLIGATIONS ESTABLISHED IN THE
9 MEMORANDUM OF UNDERSTANDING, THE TAXPAYER MAY NO LONGER USE
10 THE APPORTIONMENT METHOD SET FORTH IN SUBSECTION (2) OF THIS
11 SECTION AND APPORTIONMENT SHALL BE DETERMINED PURSUANT TO
12 SECTION 39-22-303.5.

13 (4) NOTWITHSTANDING SECTION 24-1-136 (11), ON NOVEMBER 1,
14 2019, AND EACH NOVEMBER 1 THEREAFTER, THE OFFICE AND THE
15 DEPARTMENT OF REVENUE SHALL SUBMIT A REPORT TO THE FINANCE
16 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE FINANCE
17 COMMITTEE OF THE SENATE, OR ANY SUCCESSOR COMMITTEES, THAT
18 INCLUDES A SUMMARY OF THE USE OF THIS SECTION, THE CAPITAL
19 INVESTMENTS MADE, AND THE NUMBER OF MEMORANDA OF
20 UNDERSTANDING ENTERED INTO AND THAT INCLUDES AN UPDATE ON THE
21 USE OF MARKET-BASED APPORTIONMENT IN THE STATE.

22 **SECTION 2. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2018 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.