

## **Michigan Strategic Fund**

### **Enterprise Data Center Sales and Use Tax Exemption Guidelines**

#### **Overview**

Public Act 181 of 2024 amended the Use Tax Act, MCL 205.94cc (the “Use Tax Act”), and Public Act 207 of 2024 amended the General Sales Tax Act, MCL 205.54ee, (the “Sales Tax Act”) (collectively, the “Acts”) to create an exemption for Data Center Equipment<sup>1</sup> sold to or stored, used, or consumed by the following:

- A Qualified Entity<sup>2</sup> or its Affiliates<sup>3</sup> for assembly, use, or consumption in the operations of an Enterprise Data Center<sup>4</sup>, or
- A person engaged in the business of constructing, altering, repairing, or improving real estate for others, to the extent that the Data Center Equipment is to be affixed to or made a structural part of an Enterprise Data Center.

To become a Qualified Entity, an applicant must complete the online application questionnaire and provide any required supporting documentation to apply for a Certificate<sup>5</sup> issued by the Michigan Strategic Fund (“MSF”). The application must include an affirmation signed by the applicant stating that it expects the facility to satisfy each of the criteria for an Enterprise Data Center under subsection 10(e) of the Acts and the anticipated time frame for doing so, which must not exceed six years.

Only transactions on qualified purchases made after receiving the Certificate are eligible for exemption.

After receiving the Certificate, the Qualified Entity will be required to provide annual reporting to the MSF, and the MSF must determine that the facility continues to meet all qualifications of an Enterprise Data Center. If the facility fails to maintain compliance with the requirements under the Acts, the MSF must revoke the Qualified Entity’s Certificate,

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<sup>1</sup> “Data Center Equipment” is defined by the Acts, including computers and certain computer equipment, as well as certain software and certain construction materials used for the construction or modification of an Enterprise Data Center.

<sup>2</sup> A “Qualified Entity” means an applicant to whom a Certificate is issued for a particular Enterprise Data Center project under the definitions and requirements of the Acts.

<sup>3</sup> “Affiliates” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified person.

<sup>4</sup> “Enterprise Data Center” means a facility that the MSF determines meets, or is expected to meet within the time frame set forth in the Certificate, the requirements listed in these guidelines, as defined in the Acts.

<sup>5</sup> “Certificate” means the document issued by the MSF to an applicant under subsection 6(a) of the Acts that certifies or otherwise establishes that the facility developed, owned, and operated by the applicant of an affiliate of the applicant, or to be developed, owned, and operated by the applicant or an affiliate of the applicant, and identified in that document qualifies as an Enterprise Data Center under the Acts.

ending such exemption and requiring the repayment of all tax exemptions claimed under that Certificate.

The time frame for this exemption is April 22, 2025 through December 31, 2050, or in the case of an Enterprise Data Center located on a property included in a brownfield plan under the Brownfield Redevelopment Financing Act (1996 PA 381, MCL 125.2651 to 125.2670), or on property that was once an industrial site used primarily as a power plant to generate electricity for sale, through December 31, 2065. No new Certificates may be issued by the MSF after December 31, 2029.

The MSF may charge and collect reasonable administrative fees to effectuate the certification and compliance processes. Those fees are as follows:

Application Fee - \$50,000.00  
Annual Administrative Fee - 0.25% of the minimum investment required, divided annually until the end of the term  
Amendment or Transfer Fee - \$7,000 per occurrence  
Late Reporting Fee - \$5,000.00 per occurrence  
Late Annual Administrative Fee Payment - \$5,000.00 per occurrence

All Certificates granted shall be memorialized in a final written agreement, the terms and conditions of which shall not be inconsistent with these Guidelines and the Acts.

### **Applicants**

An applicant for this exemption must be a person seeking a Certificate for an Enterprise Data Center. The application must include an affirmation signed by the applicant stating that it expects the facility to satisfy each of the criteria for an Enterprise Data Center detailed in the Acts and the anticipated time frame for doing so, which must not exceed 6 years from the date of certification.

Not later than 120 days after receiving a complete and correct application, the MSF shall review the application and either issue a Certificate to the applicant or provide written reasons for its denial.

A Qualified Entity is subject to the MSF Background Review Policy.

### **Enterprise Data Center eligibility requirements**

An Enterprise Data Center is a facility that must meet the following eligibility requirements:

- The facility is located in Michigan
- The facility is composed of one or more buildings
- The facility is designed and intended for housing, and does house, data center equipment to centralize the storage and processing of data

- Aggregate Capital Investment<sup>6</sup> in the facility by the Qualified Entity and any of its Affiliates that will develop, own, and operate the facility, is not less than \$250,000,000.00
- The Qualified Entity and any of its Affiliates, in the aggregate, must create and maintain a minimum of 30 Qualified New Jobs<sup>7</sup> in Michigan with an annual wage that is equal to 150% or more of the Prosperity Region<sup>8,9</sup> median wage. These jobs must be maintained through December 31, 2050, or December 31, 2065 if the facility is located on property included in a brownfield plan under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2670, or on property that was once an industrial site used primarily as a power plant to generate electricity for sale
- The facility does not receive, and through either December 31, 2050, or December 31, 2065, will not receive any state or local Property Tax Benefit<sup>10</sup> including, but not limited to, property tax benefits available under the General Property Tax Act (1893 PA 206, MCL 211.1 to 211.155), the Michigan Renaissance Zone Act (1996 PA 376, MCL 125.2681 to 125.2696), or under 1974 PA 198 (MCL 207.551 to 207.572), unless the Governing Body<sup>11</sup> of each Local Unit of Government<sup>12</sup> affected by the property tax benefit approves the receipt of the Property Tax Benefit by resolution<sup>13</sup>
- Upon being placed in service, the facility will use municipal water sourced from a municipal water system that has available capacity to service the facility

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<sup>6</sup> “Aggregate Capital Investment” means the capital investment made and maintained in the facility to the extent that the investment results in an increase in the total capital investment that the qualified entity and its affiliates, in the aggregate, maintain in this state when compared to the total capital investment that the qualified entity and its affiliates, in the aggregate, maintained in Michigan before the issuance of the Certificate, as determined and verified by the MSF.

<sup>7</sup> “Qualified New Job” means a full-time job created by the Qualified Entity or its Affiliates at the facility that is in excess of the number of full-time jobs that the applicant and its affiliates maintained in Michigan before issuance of the Certificate, as determined and verified by the MSF.

<sup>8</sup> “Prosperity Region” means each of the 10 prosperity regions identified by the Department of Technology, Management, and Budget on August 25, 2017.

<sup>9</sup> “Prosperity Region Median Wage” means the median annual wage for the prosperity region where the facility is located based on the most recent data made available by the Michigan Bureau of Labor Market Information and Strategic Initiatives.

<sup>10</sup> “Property Tax Benefit” means any benefit that reduces the property tax burden on the facility for the purpose of encouraging economic development, such as property tax exemptions, millage rate or valuation reductions, and property tax capture other than capture under a brownfield plan that has been approved by the governing board under the Brownfield Redevelopment Financing Act (1996 PA 381, MCL 125.2651 to 125.2670) that is in effect at the time of the application for a Certificate.

<sup>11</sup> “Governing Body” means the body in which the legislative powers of a local unit of government are vested.

<sup>12</sup> “Local Unit of Government” means a city, village, township, or county.

<sup>13</sup> Acts, subsection (10)(e)(vi)

- Not later than 3 years after being placed in service, the facility will obtain one or more green building standards<sup>14</sup>.
- The facility must procure clean energy as that term is defined in section 51 of the Clean and Renewable Energy and Energy Waste Reduction Act (2008 PA 295, MCL 460.1051) equivalent to 90% of the facility's forecasted electricity usage on an annual basis, as detailed in subsection (10)(e)(ix) of the relevant sections of the Acts<sup>15</sup>
- The facility cannot receive electric service under any of the following rates:
  - The long-term industrial load rate established under section 10gg of 1939 PA 3 (MCL 460.10gg) unless the designated power supply resource on which the long-term industrial load rate is based was placed in operation after January 1, 2024 and the rate is at least equivalent to the average industrial rate charged to other industrial customers of the electric utility that serves the facility
  - A tariff rate approved in Michigan Public Service Commission Case No. U-21160, U-21163, or U-21646
  - A rate that causes residential customers to subsidize the costs incurred to provide electric service to the facility

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<sup>14</sup> The facility must attain certification under, and the Qualified Entity must certify to the MSF that the facility has obtained certification under one or more of the following green building standards:

- (A) BREEAM for New Construction or BREEAM for In-Use.
- (B) ENERGY STAR.
- (C) Envision.
- (D) ISO 50001 – energy management.
- (E) LEED for Building Design and Construction or LEED for Operations and Maintenance.
- (F) Green Globes for New Construction or Green Globes for Existing Buildings.
- (G) UL 3223.

<sup>15</sup> A Qualified Entity or its Affiliate complies with this requirement if it executes a long-term contract with a utility provider that (1) is subject to and is operating under the regulatory framework set forth in Section 51 of the Clean and Renewable Energy and Energy Waste Reduction Act, 2008 PA 295, MCL 460.1051 (the "Clean Energy Act") and (2) the utility provider is actively pursuing compliance with the requirements of Section 51 of the Clean Energy Act, including through authorized extensions, variances, or alternative mechanisms permitted by the Michigan Public Service Commission (the "Contracted Utility Provider"). If the Contracted Utility Provider is determined to be non-compliant with the requirements under Section 51 of the Clean Energy Act, a Qualified Entity or its Affiliate that procured the long-term contract with the Contracted Utility Provider in good faith and certified its intent to procure clean energy as required under these Guidelines is not subject to revocation or repayment of the exemptions claimed under the Certificate solely on this basis.

### **Certification by the Qualified Entity**

The Certificate must specify a time frame for a facility to satisfy the requirements of an Enterprise Data Center, which time frame must be the lesser of 6 years or the time frame identified in the application by the applicant.

Coincident with receiving the Certificate from the MSF, the Qualified Entity or its Affiliate must certify at the time the exemption is claimed, by signing the Certificate, the following:

- That at the time the facility is placed in service, the facility will use municipal water sourced from a municipal water system that has available capacity to serve the facility.
- That the facility has or will have procured the 90% clean energy requirement described above, as outlined in the Acts, with certification to the MSF required at the time the exemption is claimed

The Qualified Entity must certify through annual reporting and any required supplemental information that the facility has obtained certification under one or more green building standards specified in the Acts, no later than three years after the facility has been placed into service.

### **Reporting**

The MSF must provide the Michigan Department of Treasury ("Treasury") with a copy of each Certificate issued to an Enterprise Data Center, as well as a copy of each report received from a Qualified Entity. These reports are subject to audit. Except for the provision of each Certificate and the copies of each report, the MSF shall not disclose any information that is not aggregated or any information that could be used to identify a specific person or data center.

The Qualified Entity must report the following to the MSF on an annual basis:

- Purchases for which an exemption is claimed
- Employment
- Tax withholding
- Capital investment
- Other information required by the MSF to determine whether the facility continues to qualify as an Enterprise Data Center

A person engaged in the business of constructing, altering, repairing, or improving real estate for others that has claimed an exemption for a particular facility must submit an annual summary report to the Qualified Entity or former Qualified Entity to which a Certificate for that facility was issued on or before January 1 of each year. That summary report must contain, at a minimum:

- Information sufficient to identify the person that made the purchases
- The purchase price of all items purchased, itemized by each month of that year

The person seeking the exemption must maintain all invoices, bills of sale, or similar documents for all claimed exempt purchases that indicate the dates of purchase, the items purchased, and the purchase price of the property that is identified in the summary report. These documents must be maintained for four years after the date of purchase.

### **Revocation of the Certificate**

The MSF must revoke a Certificate if the facility no longer meets the definition of an Enterprise Data Center as defined by the Acts.

If the MSF determines that a revocation is appropriate, the MSF shall notify the Qualified Entity and Treasury in writing no more than 180 days, but no less than 60 days, before revocation, notifying the Qualified Entity of its preliminary determination to revoke the Certificate. The Qualified Entity will have an opportunity to demonstrate that the facility continues to meet the definition of an Enterprise Data Center, within the time period specified in the notice.

If the MSF determines, after the expiration of the notice period, that the facility does not meet the definition of an Enterprise Data Center, the MSF must revoke the Certificate, making the former holder of the Certificate no longer a Qualified Entity.

If the revocation happens less than 10 years after issuance of the Certificate, the former Qualified Entity must pay Treasury an amount equal to the entire amount of the tax exemptions stemming from the Certificate (the exemption received by all persons) plus interest as specified in Section 23(2) of the Revenue Act (1941 PA 122, MCL 205.23), calculated from January 1 of the year the exemption was received until the amount is paid to Treasury.

If more than 10 years after issuance of the certificate, the MSF may lower the amount that a former Qualified Entity must repay to 50% of the entire amount of the tax exemption, plus interest as specified in the Section 23(2) of Revenue Act, calculated from January 1 of the year the exemption was received until the amount is paid to Treasury; provided, however, the former Qualified Entity remains responsible for 100% of the amount of the tax exemption claimed during the first 10 years after issuance of the certificate.

However, revocation for material misrepresentation, fraud, or material failure by the Qualified Entity to comply with any of the terms and conditions of the Certificate will constitute an event of default and require 100% of the amount of the tax exemption claimed, plus interest as specified in the Revenue Act, to be repaid to Treasury.

The MSF must notify Treasury within 5 days of a revocation.