SB 23-207

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number:	LLS 23-0550	**Date:**	August 22, 2023
Prime Sponsors:	Sen. Buckner	**Bill Status:**	Deemed Lost
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Bill Topic: **SALES & USE TAX REFUND FOR DATA CENTER PURCHASES**

Summary of Fiscal Impact:

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☐ Local Government
☐ Statutory Public Entity

The bill would have allowed taxpayers to claim a sales and use tax refund for purchases of data center construction materials and equipment. The bill would have decreased state revenue and increased state expenditures on an ongoing basis through FY 2032-33.

Appropriation Summary: For FY 2023-24, the bill would have required an appropriation of $45,608 to the Office of Economic Development and International Trade.

Fiscal Note Status: The fiscal note reflects the preamended bill. The bill was deemed lost in the Senate Appropriations Committee on May 9, 2023; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 23-207

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue	General Fund	-	-	($9.6 million)
	Total Revenue	**-**	**-**	**($9.6 million)**
Expenditures	General Fund	$45,608	$111,247	$214,370
	Centrally Appropriated	$10,167	$22,633	$50,964
	Total Expenditures	**$55,775**	**$133,880**	**$265,334**
	Total FTE	**0.6 FTE**	**1.3 FTE**	**2.9 FTE**
Transfers		-	-	-
Other Budget Impacts	TABOR Refund	-	-	Not estimated
	General Fund Reserve	$6,841	$16,687	$32,156

Summary of Legislation

The bill allows taxpayers to claim a sales and use tax refund for purchases of construction materials or equipment in eligible data centers for FY 2025-26 through FY 2032-33. Data center equipment includes computer equipment, software, servers, routers, connections, monitoring and security equipment, substations, generators, cabling, batteries, cooling equipment, water conservation systems, and other tangible and intangible personal property essential to the operations of the data center. The bill requires the Office of Economic Development and International Trade (OEDIT) to review and certify up to three eligible data centers each year of the reimbursements based on the requirements that the data center:

- creates at least 10 full-time equivalent jobs;
- brings at least $100 million dollars of new investment to the state;
- will reach a minimum of 3 megawatts of new electric load for the project; and
- is approved by the Economic Development Commission

Refunds may be claimed on purchases made on or after the date of certification, up to an amount approved by the Economic Development Commission, and may be claimed for purchases made in the year prior to application for a refund. Once a data center is certified, it maintains its status as an eligible data center for 10 years following the first investment in construction materials or equipment. Eligibility is also maintained regardless of sale or transfer of the data center. Taxpayers that can claim a refund include data center businesses or operators. Operators may include persons, firms, or tenants of the data center for use in their own business or for selling or leasing data storage and computer services to other persons, firms, or entities. Taxpayers may assign a data center certification to lenders, equity investors, other providers of financing, or to a successor operator.

State Revenue

The bill will decrease General Fund revenue by $9.6 million in FY 2025-26, with larger impacts expected in future years. Revenue could decrease by an estimated $39 million in the final year of the refund window in FY 2032-33. There is significant uncertainty regarding data center development that could be eligible under the bill. Areas around the nation have reported recent data center campuses upwards of 100 megawatts (MW) of space. Development activity can be constrained by land, energy, water, or other factors. The extent that actual construction and operations vary from the assumptions in the analysis will increase or decrease the estimated impacts. Sales and use tax revenue is subject to TABOR.

Data and assumptions. The analysis assumes that 15 MW of new electric load in data centers will become eligible for sales and use tax refunds in FY 2025-26. New electric load in data centers eligible under the bill could grow to 22 MW by FY 2032-33, or about 5.6 percent growth each year. In FY 2025-26, taxable equipment and electricity for eligible new data centers is assumed to total about $321.5 million for 15 MW based on industry research, potential cabinets, capacity utilization, and cost of equipment per unit. Costs were escalated each year based on 2.5 percent annual price growth through the analysis period. Electricity costs assume about $0.07 per kilowatt hour based on industry reports, escalated based on projected price growth, and assuming about half the estimated electric load is utilized on average. Eligible replacement purchases for obsolete equipment is expected to total about 25 percent each year of a data centers' eligibility due to the economic life of the equipment and tenant turnover.

The analysis assumes construction costs are incurred prior to meeting eligibility and certification requirements and are not eligible for refund under the bill. To the extent eligibility is met prior to completion of construction will increase the estimated revenue impact. Construction costs assume $10 million in cost per MW, escalated by 2.5 percent each year through the analysis period. Construction materials for the initial 15 MW of new data center space in the analysis could total an estimated $81.2 million assuming 50 percent of construction cost is for materials.

State Expenditures

The bill increases state expenditures in by $55,775 in FY 2023-24 and $133,880 in FY 2024-25, with increasing expenditures expected in subsequent years. State expenditures under the bill are paid from the General Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 23-207

	FY 2023-24	FY 2024-25	FY 2025-26
OEDIT			
Personal Services	$37,993	$50,658	$50,658
Operating Expenses	$945	$1,080	$1,080
Capital Outlay Costs	$6,670	-	-
Centrally Appropriated Costs[1]	$10,167	$13,556	$13,556
FTE – Personal Services	0.6 FTE	0.8 FTE	0.8 FTE
OEDIT Subtotal	**$55,775**	**$65,294**	**$65,294**
Department of Revenue			
Personal Services	-	$38,102	$152,405
Operating Expenses	-	$675	$2,835
Capital Outlay Costs	-	$13,340	-
Office of Research and Analysis	-	$7,392	$7,392
Centrally Appropriated Costs[1]	-	$9,077	$37,408
FTE – Personal Services	-	0.5 FTE	2.1 FTE
DOR Subtotal	**-**	**$68,586**	**$200,040**
Total	**$55,775**	**$133,880**	**$265,334**
Total FTE	**0.6 FTE**	**1.3 FTE**	**2.9 FTE**

[1]Centrally appropriated costs are not included in the bill's appropriation.

Office of Economic Development and International Trade. Because taxpayers may first claim refunds at the beginning of FY 2025-26 for sales tax paid during the year prior, it is assumed that taxpayers will begin to apply for certification in time for purchases made in FY 2024-25. The OEDIT will require 0.8 FTE annually for a program coordinator position to develop a certification process and certify eligible data centers. Personnel costs will begin in FY 2023-24 to develop the certification process in advance of initial applications; these costs assume a September 1, 2023 start date and reflect the General Fund paydate shift. The OEDIT will also be required to work with the Department of Revenue to report on data center certifications and sales and use tax refunds.

Department of Revenue. The Department of Revenue will require 0.5 FTE in FY 2024-25, prorated for starting in April 2025 to be onboarded and trained in the review and processing of refund claims. In FY 2025-26, 2.1 FTE will be required to review and process an estimated 115 refund claims. Each claim is assumed to be for $2.6 million of purchases, on average, escalated for annual inflation. Sales and use tax refunds are manually reviewed and processed. Each claim is assumed to require 40 hours. The number of claims will depend on batches of purchases filed with each claim, number of data center operators, tenant turnover, and other factors. As more data centers become eligible, claims are expected to grow each year. In FY 2026-27, there will be an estimated 150 claims requiring 2.9 FTE. By FY 2032-33, claims are expected to increase about 20 percent each year to about 400 claims and could require 7.7 FTE.

The new exemption in the bill will incur additional costs for the Office of Research and Analysis, an estimated $7,392 in FY 2024-25 and subsequent years to track and report on the new tax expenditure. Additionally, the bill will require the department to work with the Office of Economic Development and International Trade and the State Auditor to report on the sales and use tax refunds.

Interest payments. Some refunds processed by the department accrue interest. The additional sales and use tax refund claims under the bill may accrue interest and may result in increased interest payments for other claims if the bill increases the backlog currently processed by the department. To the extent that additional personnel required by the department to prioritize and process refund claims under the bill can manage increased workload will reduce interest payments. From 2018 to 2021, the department paid less than $75,000 in interest for sales and use tax refunds each year.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill may decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. However, a forecast of state revenue subject to TABOR is not available beyond FY 2024-25. TABOR refunds are paid from the General Fund. If revenue exceeds the Referendum C cap when refunds become available under the bill, decreased General Fund revenue will lower the TABOR refund obligation, but result in no net change to the amount of General Fund otherwise available to spend or save. If revenue is below the Referendum C cap, reduced revenue will reduce the amount of General Fund available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, except the sales and use tax refund provisions begin July 1, 2025.

State Appropriations

For FY 2023-24, the bill requires a General Fund appropriation of $45,608 to the Office of Economic Development and International Trade and 0.6 FTE.

State and Local Government

Counties	Information Technology	Municipalities
OEDIT	Personnel	Regional Transportation District
Revenue	Special District Association	