SB 24-085

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 24-0654	**Date:**	February 27, 2024
Prime Sponsors:	Sen. Priola; Buckner Rep. Parenti; Weinberg	**Bill Status:**	Senate Business, Labor, & Tech.
		Fiscal Analyst:	Amanda Liddle | 303-866-5834 amanda.liddle@coleg.gov

Bill Topic: **SALES & USE TAX REBATE FOR DIGITAL ASSET PURCHASES**

Summary of Fiscal Impact:

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

The bill allows taxpayers to claim a sales and use tax refund for purchases of data center construction materials and equipment. The bill decreases state revenue and increases state expenditures on an ongoing basis through FY 2033-34.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 24-085

		Budget Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27
Revenue	General Fund	-	-	($9.6 million)
	Total Revenue	**-**	**-**	**($9.6 million)**
Expenditures	General Fund	-	$94,605	$214,169
	Centrally Appropriated	-	$10,919	$52,394
	Total Expenditures	**-**	**$105,524**	**$266,563**
	Total FTE	**-**	**0.6 FTE**	**2.9 FTE**
Transfers		-	-	-
Other Budget Impacts	TABOR Refunds	-	-	Not estimated
	General Fund Reserve	-	$14,191	$32,125

Summary of Legislation

The bill allows taxpayers to claim a refund of state sales and use tax for purchases of construction materials or equipment in eligible data centers for FY 2026-27 through FY 2033-34. 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 to claim 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. 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 2026-27, with larger impacts expected for future years. Revenue could decrease by an estimated $39.9 million in the final year of refund window in FY 2033-34. Sales and use tax revenue is subject to TABOR.

There is significant uncertainty regarding data center development that could become eligible for sales and use tax refunds under the bill. Data center campuses elsewhere have upwards of 100 megawatts of electric load. Development activity can be constrained by land, energy, water, and other geographical factors. To extent that actual construction and operations vary from the assumptions in the analysis, impacts will be greater or less than those estimated.

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 2026-27. New electric load in data centers eligible under the bill could grow to 22 MW by FY 2033-34, or about 5.6 percent growth each year. In FY 2026-27, taxable equipment for eligible new data centers is assumed to total about $329.5 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. 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 refunds under the bill. If data centers become certified before construction is complete, this could significantly increase the bill's impact on state revenue.

State Expenditures

The bill increases state expenditures by $106,000 in FY 2025-26 and $267,000 in FY 2026-27, with increasing expenditures expected in subsequent years. Expenditures under the bill are for the Department of Revenue and OEDIT and paid from General Fund. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under SB 24-085

	FY 2024-25	FY 2025-26	FY 2026-27
Department of Revenue			
Personal Services	-	$36,530	$152,453
Operating Expenses	-	$640	$2,688
Capital Outlay Costs	-	$6,670	-
Office of Research and Analysis	-	$7,392	$7,328
Centrally Appropriated Costs[1]	-	$9,175	$38,443
FTE – Personal Services	-	0.5 FTE	2.1 FTE
DOR Subtotal	-	**$60,407**	**$200,912**
OEDIT			
Personal Services	-	$6,335	$50,676
Operating Expenses	-	$128	$1,024
Capital Outlay Costs	-	$6,670	-
Salesforce	-	$30,240	-
Centrally Appropriated Costs[1]	-	$1,744	$13,951
FTE – Personal Services	-	0.1 FTE	0.8 FTE
OEDIT Subtotal	-	**$45,117**	**$65,651**
Total Cost	**-**	**$105,524**	**$266,563**
Total FTE	**-**	**0.6 FTE**	**2.9 FTE**

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

Department of Revenue. The Department of Revenue will require 0.5 FTE in FY 2025-26 to be onboarded and trained in the review and processing of refund claims. In FY 2026-27, 2.1 FTE will be required to review and process an estimated 115 refund claims. Each claim is assumed to be for $2.9 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 the 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 2027-28, there will be an estimated 150 claims requiring 2.9 FTE. By FY 2033-34, 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 2025-26 and $7,328 in FY 2026-27 and subsequent years to track and report on the new tax expenditure. Additionally, the bill will require DOR to work with OEDIT and the State Auditor to report on the sales and use tax refunds

Interest payments. Some refunds processed by the Department of Revenue 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.

OEDIT. Because taxpayers may first claim refunds at the beginning of FY 2026-27 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 2025-26. 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 June 2026 to develop the certification process in advance of initial applications. OEDIT will also be required to work with DOR to report on data center certifications and sales and use tax refunds. Finally, OEDIT will require resources to build out a tax rebate application in Salesforce in FY 2025-26, assumed to take 135 hours at a rate of $224 per hour.

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 2025-26. 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. The sales and use tax refunds in this bill are allowed beginning July 1, 2026.

State and Local Government Contacts

Counties	Municipalities	Office of Economic Development
Personnel	Revenue	State Auditor
Special District Association		

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the General Assembly website.