

D  **R** Rhode Island Department of Revenue
Division of Taxation

Via Electronic Mail

March 10, 2026

The Honorable Robert Britto
Chair, Senate Committee on Commerce
Rhode Island State House
Providence, RI 02903

RE: Letter Regarding Senate Bill 2346 – An Act Relating to State Affairs and Government -- Rhode Island Commerce Corporation

Dear Chair Britto:

I am writing on behalf of the Rhode Island Department of Revenue, Division of Taxation (“Division”), to: i) express concerns regarding issues with proposed Senate Bill 2346 as currently drafted; ii) explain the background and current statutory context in order to clarify the intended and unintended consequences of this bill; and iii) make recommendations and request your support in implementing those recommendations.

This letter is not intended as a position in support of or opposition to the bill, but solely as recommendations on drafting to provide clarity in the bill and to aid tax administration and compliance.

As you know, this bill, in part, would amend R.I. Gen. Laws § 42-64-3, entitled “Rhode Island Commerce Corporation – Definitions,” amend Chapter 42-64 by adding a new R.I. Gen. Laws § 42-64-43, entitled “Qualified data center location incentive,” and amend R.I. Gen. Laws § 44-18-30, entitled “Gross receipts exempt from sales and use taxes,” to add to the list of sales and use tax exemptions “[q]ualified data center equipment.” The proposed bill, as set forth in its legislative explanation, would establish various tax exemptions for the location of qualified data centers, as defined in the bill, “upon a minimum qualified investment of two hundred million dollars (\$200,000,000) in a designated enterprise zone and four hundred million dollars (\$400,000,000) in a non-enterprise zone.” The bill provides that tax exemptions would be applied for with and approved by the Commerce Corporation, in consultation with the Director of the Department of Revenue. The bill is set to be effective upon passage.

There are several potential issues with the bill that impact tax administration, including, but not limited to:

- As the bill is currently written, the application and approval process for the data center location incentive is unclear in that proposed § 42-64-43 states that the “director, in consultation with the director of revenue” shall review the sales and use tax exemption

applications. First, the Division recommends that the Tax Administrator be substituted for the Director of Revenue as the Division is responsible for administering sales and use tax exemptions and there are strict statutory and regulatory confidentiality mandates that prohibit disclosure of tax information outside of the Division. Second, the language throughout the bill is ambiguous as to when “director” refers to the director within Commerce Corporation versus the Director of Revenue, which causes confusion about which agency is responsible for certain decisions and processes.

- Imposing a sixty (60) day review period for qualified data center applications is unrealistic given the intricacies and complexity of the application requirements.
- It is problematic that the failure to approve or deny an application within sixty (60) days of its receipt would “constitute approval of the qualified data center” and require the director to issue a written certification. Approval of an application for a sales and use tax exemption by default due to this timing requirement in the review stage would conflict with the provisions allowing for the exemption under R.I. Gen. Laws § 44-18-30, which requires the “qualified data center equipment” to still meet the definition under R.I. Gen. Laws § 42-64-3 to be exempt.
- The process and timing of the bill’s sales and use tax exemption is unprecedented and raises significant administrability concerns. The process of application by, and certification of, a taxpayer as qualified for the sales and use tax exemption based on the criteria in proposed subsection 42-64-43(b) may conflict with administering the exemption under R.I. Gen. Laws § 44-18-30 to the detriment of taxpayers based on the timing of the application, review, and decision. This is a broad exemption that has components that could occur years apart and be difficult to track and ensure compliance.
- As the bill is currently drafted, the sales and use tax exemption would be valid for thirty (30) years after the certification’s effective date. Provisions should be added to include key elements needed for purposes of proper administration, including termination of and/or revocation of the exemption certificate when the eligibility or compliance requirements are no longer met.
- In proposed § 42-64-43(e), the Commerce Corporation may assess penalties for noncompliance, but proposed § 42-64-43(f) provides that those penalties “shall be paid to the department, as established by chapter 142 of title 42[,]” which is the Department of Revenue. However, there is no mechanism for such penalties to be paid to the Department of Revenue within the proposed bill or Chapter 42-142. The Division respectfully requests that the bill be redrafted for clarity on the assessment, collection, and remittance of such penalties.
- Relatedly, the bill does not include a provision providing the authority to terminate or revoke a tax exemption certificate for noncompliance. As such, because the bill does not include a provision providing the authority to terminate or revoke there is no clarity on who would assess the tax, who the payments would be made to, whether the assessment would include interest and/or penalty, or further that the agreement would be terminated and/or the exemption certificate issued would be revoked.

- As the bill is currently drafted, there are no job creation requirements that would tie directly to jobs created in Rhode Island subject to taxation by Rhode Island. Data centers traditionally employ primarily remote workers that would not necessarily be located in Rhode Island or subject to Rhode Island tax. This means that income from wages paid, and the business income, may not be “from” the data center in Rhode Island, which would result in the sales tax exemption simply increasing profits for an out of state company.
- It appears that the bill is written with the expectation that the servers, platforms, and software are tangible property; however, in general, data centers are moving to virtualization technology, increasingly available by subscription, and virtualization of maintenance. As a result, the definitions would need to include the virtual substitute for each tangible item and ensure that definitions and provisions in the bill incorporate Software as a Service, Infrastructure as a Service, and Platform as a Service.
- Electricity already is exempt from sales and use tax pursuant to R.I. Gen. Laws § 44-18-30. The bill should be reviewed to ensure that any references to electricity are consistent with existing law and do not create unnecessary duplication or confusion.
- Also, as Rhode Island is a signatory to the Streamlined Sales and Use Tax Agreement (SSUTA), it must ensure compliance with SSUTA in relation to the exemption and, therefore, the Division recommends an effective date ninety (90) days subsequent to passage of the bill to allow adequate time for implementation and coordination.

The Division takes no position with respect to the remainder of the proposed legislation. Rather, the Division is concerned solely with the issues of clarity, tax compliance, and tax administration. As such, the Division respectfully suggests that the bill be redrafted for clarity consistent with the comments above.

The Division looks forward to working with you to address the issues raised in this letter and appreciates your consideration.

Very truly yours,



Bethany M. Whitmarsh
Assistant Tax Administrator

cc: The Honorable Members of the Senate Committee on Commerce
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The Honorable Louis P. DiPalma (via: sen-dipalma@rilegislature.gov)
Kristen Silvia, Deputy Chief of Staff/Director of Legislation
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