

Economic Development Incentives

2009 - 2010



TENNESSEE

DEPARTMENT OF ECONOMIC & COMMUNITY DEVELOPMENT

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D A T A C E N T E R



Tennessee Taxes & Incentives

Data Center - means a building or buildings, either newly constructed, expanded or remodeled, housing high-tech computer systems and related equipment. Tenn. Code Ann. § 67-6-102(20).

Qualified Data Center means a data center established on or after June 28, 2007 that has made a required capital investment in excess of \$250 million¹ during an investment period not to exceed three (3) years and that creates at least twenty-five (25) net new full-time employee jobs² during the investment period paying at least 150% of Tennessee's average occupational wage as defined in Tenn. Code Ann. § 67-4-2004(3). Tenn. Code Ann. § 67-6-102(68).

- The three (3) year investment period for making the required capital investment of \$250 million and creation of 25 jobs to be considered a Qualified Data Center may be extended by the Commissioner of ECD for a period not to exceed four (4) years for good cause.

Franchise Tax

- Tax on the greater of apportioned net worth or book value of property owned or used in Tennessee
- Tax rate is 25 cents per \$100

Incentives

- Property under construction and not being utilized is not included
- Property rented from the industrial development corporation may be valued by capitalizing it on the books
- 2/3 of capital investment for super credit is excluded from the franchise tax base in those tax years in which the annual super credit is allowed under Tenn. Code Ann. § 67-4-2109(b)(2)(B).

Excise Tax

- Tax is based on the net earnings of the company derived from the business in Tennessee
- Tax rate is 6.5%

Incentives

- All capital losses claimed in the year incurred
- Net operating losses can be carried forward for fifteen (15) years
- Tennessee's excise tax is based on the net earnings of the company derived from business in Tennessee as determined by a three factor apportionment formula of property, payroll and sales with sales double-weighted.



Tennessee Taxes & Incentives

- Tennessee does not have a throwback provision – thus the state does not require companies with sales outside of Tennessee that are not apportioned to or taxed by another state to be included in the numerator of sales in Tennessee.

Job Tax Credit for Data Center

A taxpayer who makes the \$500,000 minimum capital investment in a data center in a twelve (12) month period qualifies for a job tax credit as follows:

- \$4,500 per net new full-time job in any Tennessee county.³
- \$5,000 per net new full-time job for companies that qualify for the super credit by investing over \$100 million and creating at least 100 net new full-time jobs paying 100% of the average occupational wage.
- The Job Tax Credit may offset up to 50% of the combined franchise and excise tax.⁴
- Must create 25 net new full-time jobs and increase capital investment⁵ by \$500,000 in a qualified business enterprise⁶ within twelve (12) months of the effective date of the business plan filed with the Department of Revenue, unless in a Tier 2 or Tier 3 county.
- Qualified business enterprises that are in a Tier 2 enhancement county shall have three (3) years in order to create the minimum number of 25 jobs necessary to qualify for the Job Tax Credit.
- Qualified businesses in a Tier 3 county shall have five (5) years to create the minimum number of 25 jobs to receive the Job Tax Credit.
- Job Tax Credit for taxpayers investing less than \$1 billion may be carried forward until used, but not more than fifteen (15) years.
- In order to qualify for the Job Tax Credit, the taxpayer must file a business plan⁷ in a manner prescribed by the Commissioner of Revenue. The business plan must describe the investment to be made, the number of jobs the investment will create, the expected dates the jobs will be filled and the effective date of the business plan. Tenn. Code Ann. § 67-4-2109(c)(2)(D) as amended by Tenn. Pub. Chap. No. 530, Public Acts 2009 (effective July 1, 2009).

Enhanced Job Tax Credit in Tier 2 and Tier 3 Enhancement Counties

Tennessee recently enacted new legislation that allows for an additional tiered Job Tax Credit. This credit had been created to promote new industry locations and expansions in the more rural areas of the state. The tiers are based on each Tennessee counties' per capita income, unemployment, and poverty level. Evaluation and analysis of each county is performed each year to determine each Tennessee counties' tiered status. Projects which locate in a Tier 2 or Tier 3 county will be eligible for this additional credit.

- \$4,500 per net new full-time job applied to offset both franchise and excise tax



Tennessee Taxes & Incentives

- Must increase capital investment by \$500,000 in a qualified business enterprise within a twelve (12) month period and create 25 net new full-time jobs during the investment period of three (3) years in a Tier 2 county and five (5) years in a Tier 3 county.
- Tier 2 counties - Enhanced Job Tax Credit of additional \$4,5000 per job can offset up to 100% of the total franchise and excise tax liability each year for three (3) years after the investment period with no carry forward.
- Tier 3 counties - Enhanced Job Tax Credit of additional \$4,500 per job can offset up to 100% of the total franchise and excise tax liability each year for five (5) years after the investment period with no carry forward.
- Credit is in addition to the regular Job Tax Credit as set forth above.

Super Job Tax Credit⁸

Tennessee has enacted legislation that provides a job tax super credit ("super credit") for taxpayers investing in excess of \$100 million in a qualified business enterprise creating 100 or more net new full-time jobs paying at least 100% of the average occupational wage in the state.⁹

This super credit may be used to offset up to 100% of a taxpayer's Tennessee franchise and excise tax liability annually beginning with the first tax year after the investment and job creation thresholds have been met. The super credit is taken annually and does not have a carry forward provision.

- The super credit is in addition to the regular Job Tax Credit which will still have the fifteen (15) year carry forward and normal percentage of offset. The only difference is by qualifying for the super credit, the amount of the regular Job Tax Credit increases to \$5,000 per new occupational wage job instead of the regular \$4,500.
- In addition, the super credit allows for the offset of total franchise and excise tax liability to be up to 100% during the time when the super credit is being taken on an annual basis.
- In addition to the jobs portion of the credit, a company that qualifies for the super credit may exclude 2/3 of its capital investment made during the investment period from its Franchise tax base on Schedule G of the franchise and excise tax return during the tax years in which the additional annual credit is actually taken.
- The super credit investment period is three (3) years, but can be expanded to five (5) years for investments of \$100 million or more and to seven (7) years for investments of \$1 billion or more with the approval of the Commissioner of ECD.
- The number of years a company may take the annual super credit of \$5,000 per job is dependent upon the capital investment and number of jobs created as follows:



Tennessee Taxes & Incentives

Capital Investment	Number of Net New Occupational Wage Jobs	Number of Years for Annual Credit
\$100,000,000 or more	100	3
\$250,000,000 or more	250	6
\$500,000,000 or more	500	12
\$1 billion or more	500	20

Additional Incentives for a Qualified Data Center

A Qualified Data Center is:

- A data center established on or after June 28, 2007 that has made a required capital investment in excess of \$250 million that creates at least twenty-five (25) net new full-time employee jobs paying at least 150% of the average occupational wage. Tenn. Code Ann. 67-6-102(68).
- A capital investment shall be deemed to have been made as of the date of payment or the date that the taxpayer enters into a legally binding commitment or contract for purchase or construction. Tenn. Code Ann. § 67-6-102(68). The investment period is three (3) years, but can be expanded to seven (7) years with the approval of the Commissioner of ECD.
- Qualified jobs pay 150% of the “Average Occupational wage” - the average wage for all industries as reported by the TN Dept of Labor and Workforce Development in the most recent annual quarterly census of employment and wages super sector data for TN, aggregate of all ownerships.¹⁰
- The average occupational wage for 2008 was \$35,376 and 150% was approximately \$53,064.

Industrial Machinery Credit for Qualified Data Center

An industrial machinery tax credit of 1% to 10% of the cost of industrial machinery purchased or leased during the tax year and located in Tennessee may be used to offset up to 50% of the total franchise and excise tax liability for a data center. Any unused credit may be carried forward for up to fifteen (15) years.

The credit is for the purchase, installation, and/or repair of qualified industrial machinery used in the operation of a Qualified Data Center as defined in Tenn. Code Ann. § 67-6-102(42)(K). “Industrial machinery” includes any computer, computer network, computer software or computer system, as defined in Tenn. Code Ann. § 39-14-601, and any peripheral devices, including, but not limited to hardware such as printers, plotters, external disc drives, modems and telephone units, including repair parts, when the equipment is used in the operation of a Qualified Data Center.



Tennessee Taxes & Incentives

Capital Investment	Percentage of Credit	Must File A Business Plan
\$100,000,000	1%	No (only available if creating jobs)
\$250,000,000	5%	Yes
\$500,000,000	7%	Yes
\$1,000,000,000	10%	Yes

For purposes of the 1% credit, the equipment must have been purchased in making the required capital investment for the job tax credit. The investment period is three (3) years, but may be expanded to five (5) years for qualified businesses investing less than \$1 billion and to seven (7) years for qualified businesses investing \$1 billion or more.

Sales and Use Tax Exemption for Qualified Data Centers

- No sales tax on purchases, installation and repairs of qualified industrial machinery used in the operation of a Qualified Data Center as defined above.
- Legislation was recently enacted amending Tenn. Code Ann. § 67-6-102(42)(K) to specifically include any computer, computer network, computer software or computer system and any peripheral devices including, but not limited to, hardware such as printers, plotters, external disc drives, modems and telephone units used in the operation of a qualified data center as “industrial machinery” exempt from sales and use tax.
- Also specifically includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center as “industrial machinery” exempt from sales and use tax.
- In addition, electricity is taxed at the rate of 1.5% when sold to or used by a Qualified Data Center. Tenn. Code Ann. § 67-6-206(c).
- A taxpayer must submit an application for the exemption to the Department of Revenue, Taxpayer and Vehicle Services Division with a plan describing the investment to be made.¹¹
- Taxpayer and Vehicle Services will issue qualifying taxpayers an exemption certificate declaring that the data center is a Qualified Data Center and entitled to the exemption.

Sales and Use Tax Credit for Qualified Facility to Support an Emerging Industry

Tennessee law makes a sales and use tax credit available to taxpayers that establish a qualified facility to support an emerging industry in Tennessee. The credit is equal to the amount of sales and use tax paid to Tennessee, less the 0.5% that is earmarked for education, on the sale or use of qualified tangible personal property. Tenn. Code Ann. § 67-6-232.



Tennessee Taxes & Incentives

- Qualified tangible personal property” means building materials, equipment, furniture and fixtures used exclusively in the qualified facility and purchased or leased during the investment period and computer software used primarily in the qualified facility and purchased or leased during the investment period.
- An emerging industry is one that promotes high-skill, high-wage jobs in high-technology areas, emerging occupations, or clean energy technology,¹² including, but not limited to clean energy technology research and development and installation, as determined by the Commissioner of Revenue and the Commissioner of ECD.
- To be eligible for the credit, the taxpayer must be subject to franchise and excise tax, make a minimum investment of \$100 million in the facility, and create at least 50 high-wage, full-time jobs at the facility that pay at least 150% of the average occupational wage for the month of January in which the full-time employee positions are created.
 - The minimum investment may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities, and landscaping, but shall not include land or inventory.
 - “Investment period” means the period beginning one (1) year prior to the start of the construction, expansion, or remodeling, and ending three (3) years after substantial completion of the construction, expansion or remodeling of the qualified facility. However, in no event shall the investment period exceed six (6) years.

Property Tax

- No state property tax



Tennessee Taxes & Incentives

FastTrack

Tennessee has a state funded program called FastTrack. Included in the program is the FastTrack Infrastructure Development Program (FIDP)-[*Community generated*] and the FastTrack Job Training Assistance Program (FJTAP)-[*Company generated*].

Under the guidelines of this program the state can make grants to local governments to help them meet the public infrastructure requirements for locating and expanding industries as well as address the training needs of a company.

Both programs require application for financial assistance.

FastTrack Infrastructure Development Program (FIDP)

The FastTrack Industrial Development Program is Tennessee's initiative to support the public infrastructure needs of the local community to support expansion or location of industry. Project funding is determined by evaluating each project in terms of capital investment, new jobs created, the types of the created jobs, and the community in which the project locates. Once a targeted funding amount of eligible activity is established, final approval is subject to FIDP funding appropriated by the Tennessee General Assembly and approval by the Department of Economic and Community Development's Loan & Grant Committee. There are state regulations that apply relative to procurement/bidding procedures.

FastTrack Job Training Assistance Program (FJTAP)

The FastTrack Job Training Assistance Program is Tennessee's initiative to support industrial recruitment and expansion through direct training assistance for newly hired employees, employees in upgraded positions, and employees retained through instruction. FJTAP staff assists each individual company to develop customized training plans and to provide funding. Eligibility for FJTAP support and levels of funding for training assistance are determined by:

- The amount of company investment
- The number of new hires
- The types of skills and knowledge that must be obtained by prospective or newly hired employees



Tennessee Taxes & Incentives

Job Specific Training (*Training assistance is targeted to production/technician level individuals.*)

- Classroom - formal instruction relating to specific skills presented in a classroom environment
- On-the-Job Training - instruction that focuses on the development of specific skills and knowledge vital to production. Training is provided by company technicians or instructors mutually acceptable to FJTAP and the company.
- Vendor - manufacturer of actual manufacturing equipment or service provider being used by the client may be utilized to deliver specific skills training.
- System Support - instruction associated with plant-wide applications. Instruction may include new methods for increasing mechanization, quality, materials handling, etc.
- Development and Coordination – supports the cost associated with the development of instructional materials and coordination of the overall training program.

Travel

- Supporting the expense of travel for the purpose of training can be considered as a viable option for the training of new hires and especially for persons who will serve as a company instructor.

Job Based Training (JBT)

Program to offer potentially faster reimbursement monies associated with training. Once the project commitment is determined and cost per job established, this quick start program may offer the company an accelerated portion of training dollars.

- After the first 3 months (60 work days) The Company records are reviewed *{proper documentation will be required}* for number of new jobs created.
- Calculation is made to determine salary paid to those new jobs multiplied by 25%.
- Calculation is made of predetermined cost-per-job multiplied by the number of jobs created during this period.

The company will be entitled to Job Based Training dollars for whichever above scenario is LESS.

- After 3 additional months the same calculation is run, with proper documentation, to allow an additional 25% computation on salaries for jobs created during the period, compared to the calculation of number of new jobs multiplied by again, the established cost-per-job.

The company is again entitled to JBT dollars for whichever scenario is LESS.



Tennessee Taxes & Incentives

Depending on the number of new jobs to be created during the periods of review, it may be possible for the company to receive the entire training commitment ***IF the total committed job number is reached.***

It is the company's elective to pursue the training commitment in either type of reimbursement method or in a combination thereof. If the commitment is not met in JBT, then direct training can be used for the balance ***IF the total job commitment is met.***

Employee Recruitment and Screening (Provided by Dept. of Labor & Workforce Dev.)

The Tennessee Department of Labor and Workforce Development, Job Service Division, will provide recruitment and screening services. Utilizing the client/company's prepared job specifications, Job Service will recruit the number of persons requested by the company. The persons will be screened using the company's specifications. Those persons meeting the specifications will be referred to the company for employment considerations.

Workforce Development

- Leadership Training - is directed toward providing supervisors, team leaders, and managers with the interpersonal skills necessary to motivate and lead production workers towards the accomplishment of organizational goals.
- Team Training - is provided for manufacturing/production employees where interpersonal communication is important in fostering interdependence, cooperation, commitment, motivation, etc.
- Instructor Certification - Certification of company personnel insures the availability of certified instructors not only at startup but also on a long term basis. The weeklong certification seminar provides candidates with the facilitation skills necessary to deliver a wide range of programs.

State Industrial Access Program (SIAP)

Other state assistance can be considered for providing needed transportation improvement for the project. Through the State Industrial Access Program (SIAP), local governments submit their requests on behalf of new industry moving into their communities, which the Department of Transportation reviews to determine the most feasible design.

Industrial Revenue Bond Financing

Industrial revenue bond financing is available in Tennessee for both taxable and tax-free situations.

All Tennessee tax and tax-based incentive information herein is provided for informational purposes only. For more specific information on whether a facility qualifies as a data center or a



Tennessee Taxes & Incentives

Qualified Data Center and what incentives are potentially available please contact your ECD Jobs Development Specialist.

¹ “Required capital investment” means an increase of a business investment in real property, tangible personal property or computer software owned in Tennessee and/or leased property in Tennessee valued according to general accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. Tenn. Code Ann. § 67-6-102(68).

² “Full time employee job” means a permanent, rather than seasonal or part-time, employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 ½) hours per week with minimum health care, as described in Tenn. Code Ann. § 56-7-2201 et seq.. Tenn. Code Ann. § 67-6-102(68).

³ Legislation effective July 1, 2009 sets the job tax credit for all counties at \$4,500 per new full-time job. For jobs created prior to 2009 in non-economically distressed counties such as Hamilton County, Knox County, Loudon County, Montgomery County, Shelby County and Williamson County the job tax credit was \$2,000 per job. Tier 2 and Tier 3 enhancement counties are entitled to additional enhanced incentives as detailed below. For information on which counties qualify as enhancement see “Tennessee Job Tax Credit Enhancement Counties” map.

⁴ A taxpayer that makes a capital investment in excess of \$1 billion may be allowed to carry forward any unused credit until fully utilized if it is determined by the Commissioner of Revenue and Commissioner of ECD to be in the best interests of the state. Tenn. Code Ann. § 67-4-2009(4)(c) as amended by Tenn. Pub. Chap. No. 530, Public Acts 2009 (effective July 1, 2009).

⁵ “Capital investment” means a business investment in real property, tangible personal property, or computer software owned or leased in Tennessee valued in accordance with generally accepted accounting principles.

⁶ “Qualified business enterprise” means an enterprise in which the business has made the required capital investment necessary to permit the creation or expansion of manufacturing, warehousing and distribution, processing tangible personal property, research and development, computer services, call centers, headquarters facilities as defined in § 67-6-224(b), or convention or trade show facilities. Tenn. Code Ann. § 67-6-2109(c)(1)(F)(i).

⁷ For information on how to obtain the appropriate Job Tax Credit Business Plan forms please contact your local ECD Jobs Development Specialist.

⁸ A taxpayer that qualifies for the job tax credit in connection with a capital investment in excess of \$100 million shall be allowed to carry forward its net operating losses beyond the initial 15 year period if the Commissioner of Revenue and Commissioner of ECD determine it is in the best interest of the state. The Commissioners shall determine the amount of time allowed beyond the initial 15 year period. Public Chapter No. 1106, Public Acts, 2008 Section 43

⁹ The current Average Occupational Wage data can be found on the website for the Tennessee Department of Labor and Workforce Development - www.state.tn.us/labor-wfd/wages/intro.htm



Tennessee Taxes & Incentives

¹⁰ Current Occupational Wage data can be found on the website for the Tennessee Department of Labor and Workforce Development - www.state.tn.us/labor-wfd/wages/intro.htm

¹¹ For information on how to obtain the appropriate application and forms please contact your local ECD Jobs Development Specialist.

¹² "Clean energy technology" means technology resulting in energy efficiency, technology used to generate energy from biomass, geothermal, hydrogen, hydropower, landfill gas, nuclear, solar and wind sources, and technology that is designed to result in the development of advanced coal through carbon capture and sequestration or otherwise any other manner that significantly reduces CO₂ emissions per unit of energy generated. Tenn. Code Ann. § 67-6-232(b)(1) as amended by SB2318/HB2275 (effective July 1, 2009).