

119TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to impose an excise tax
on data center services, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to impose
an excise tax on data center services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “_____ Act of
5 _____”.

6 **SEC. 2. EXCISE TAX ON DATA CENTER SERVICES.**

7 (a) IN GENERAL.—Subtitle D of the Internal Rev-
8 enue Code of 1986 is amended by adding at the end the
9 following new chapter:

1 **“CHAPTER 50B—DATA CENTERS**

“Sec. 5000E. Data center services.

“Sec. 5000F. Alternative tax on services provided from hyperscale data centers.

“Sec. 5000G. Orbital data centers.

“Sec. 5000H. Definitions and special rules.

2 **“SEC. 5000E. DATA CENTER SERVICES.**

3 “(a) TAX IN GENERAL.—There is hereby imposed on
4 any person who is a data center operator with respect to
5 a data center a tax equal to [_____] percent of data
6 center gross receipts attributable to data center services
7 provided by such person from such data center.

8 “(b) DATA CENTER GROSS RECEIPTS.—The term
9 ‘data center gross receipts’ means, with respect to any
10 data center, the amount of gross receipts attributable to
11 data center services provided from such data center.

12 “(c) EXEMPTION.—This section shall not apply to
13 any services provided by a data center operator with re-
14 spect to a data center if—

15 “(1) the data center operator meets the gross
16 receipts test of section 448(c) for the taxable year,
17 and

18 “(2) the data center is not a hyperscale data
19 center (as defined in section 5000F(b)).

20 “(d) SPECIAL RULE FOR TAXABLE YEARS BEGIN-
21 NING BEFORE 2030.—In the case of any taxable year be-
22 ginning before January 1, 2030, the tax imposed by sub-
23 section (a) with respect to services provided from a data

1 center shall be reduced by an amount equal to such tax
2 (determined without regard to this subsection) multiplied
3 by a fraction—

4 “(1) the numerator of which is the unadjusted
5 basis of the data center assets of the taxpayer
6 which—

7 “(A) are a part of such data center,

8 “(B) were placed in service before January
9 1, 2025, and

10 “(C) are held by the taxpayer on the last
11 day of the taxable year, and

12 “(2) the denominator of which is the
13 unadjusted basis of all data center assets of the tax-
14 payer which are a part of such data center and held
15 by the taxpayer on the last day of the taxable year.

16 **“SEC. 5000F. ALTERNATIVE TAX ON SERVICES PROVIDED**
17 **FROM HYPERSCALE DATA CENTERS.**

18 “(a) IN GENERAL.—In the case of any data center
19 operator who provides data center services from 1 or more
20 hyperscale data centers, there is hereby imposed with re-
21 spect to each such hyperscale data center (in addition to
22 any tax imposed under section 5000E) a tax equal to the
23 excess (if any) of—

1 “(1) [] percent of imputed data center
2 gross receipts with respect to such hyperscale data
3 center, over

4 “(2) the tax imposed under section 5000E with
5 respect to such data center.

6 “(b) HYPERSCALE DATA CENTER.—For purposes of
7 this section—

8 “(1) IN GENERAL.—The term ‘hyperscale data
9 center’ means any data center which is—

10 “(A) a hyperscale-owned data center,

11 “(B) a hyperscale-controlled data center,

12 or

13 “(C) a hyperscale-financed data center.

14 “(2) HYPERSCALE-OWNED DATA CENTER.—The
15 term ‘hyperscale-owned data center’ means, with re-
16 spect to any taxable year, any data center if, for
17 more than 270 days during the taxable year, the
18 majority of the data center equipment of is owned,
19 directly or indirectly, by one or more hyperscale enti-
20 ties.

21 “(3) HYPERSCALE-CONTROLLED DATA CEN-
22 TER.—The term ‘hyperscale-controlled data center’
23 means any data center if, for more than 270 days
24 during the taxable year—

1 “(A) one or more hyperscale entities uti-
2 lizes more than 50 percent of the data center
3 services provided from such data center, or

4 “(B) one or more hyperscale entities has
5 the right to utilize more than 50 percent of the
6 data center services provided from such data
7 center.

8 “(4) HYPERSCALE-FINANCED DATA CENTER.—

9 “(A) IN GENERAL.—The term ‘hyperscale-
10 financed data center’ means, with respect to
11 any taxable year, any data center if—

12 “(i) for such taxable year or any pre-
13 ceding taxable year beginning after the
14 date of the enactment of this section, more
15 than 50 percent of—

16 “(I) the aggregate costs of the
17 data center assets, or

18 “(II) the applicable data center
19 costs (as defined in subsection (c)(3)),
20 were provided through loans, equity invest-
21 ments, or other financial arrangements
22 made by one or more hyperscale entities,
23 or

24 “(ii) one or more hyperscale entities
25 had a right at any time during such tax-

1 able year or any preceding taxable year be-
2 ginning after the date of the enactment of
3 this section—

4 “(I) to force the sale of stock or
5 warrants in an amount sufficient to
6 change control of any person or per-
7 sons providing, in total, more than 50
8 percent of the data center services
9 from such data center, or

10 “(II) to purchase more than 50
11 percent of the data center assets of
12 any person or persons providing, in
13 total more than 50 percent of the
14 data center services from such data
15 center.

16 “(B) LOANS.—For purposes of subpara-
17 graph (A)(i), a person shall be treated as pro-
18 viding applicable data center costs through a
19 loan if such person guarantees or co-signs such
20 loan or is otherwise legally liable for such costs.

21 “(5) HYPERSCALE ENTITY.—For purposes of
22 this subsection—

23 “(A) IN GENERAL.—The term ‘hyperscale
24 entity’ means any person who is a major data
25 center operator or major data center payor.

1 “(B) MAJOR DATA CENTER OPERATOR.—

2 The term ‘major data center operator’ means
3 any person who owns, or otherwise uses to pro-
4 vide data center services, data center equipment
5 which, in the aggregate, have an unadjusted
6 basis in excess of \$10,000,000,000 for any pre-
7 ceding taxable year beginning after the second
8 taxable year preceding the date of the enact-
9 ment of this section.

10 “(C) MAJOR DATA CENTER PAYOR.—The
11 term ‘major data center payor’ means any per-
12 son who has expenses for data center services
13 for any preceding taxable year beginning after
14 the second taxable year preceding the date of
15 the enactment of this section in excess of
16 \$1,000,000,000.

17 “(D) AGGREGATION RULES.—For purposes
18 of this paragraph, all persons which are treated
19 as a single employer under subsections (a) and
20 (b) of section 52 shall be treated as a single
21 person.

22 “(c) IMPUTED DATA CENTER GROSS RECEIPTS.—

23 “(1) IN GENERAL.—The term ‘imputed data
24 center gross receipts’ means, with respect to any

1 hyperscale data center, an amount equal to 167 per-
2 cent of the sum of—

3 “(A) the data center depreciable asset use
4 amount for the taxable year, plus

5 “(B) the applicable data center costs paid
6 or incurred during the taxable year.

7 “(2) DATA CENTER DEPRECIABLE ASSET USE
8 AMOUNT.—

9 “(A) IN GENERAL.—The data center de-
10 preciable asset use amount for any taxable year
11 with respect to any hyperscale data center is
12 the sum of—

13 “(i) the aggregate amount of the ad-
14 justed depreciation deductions for each
15 item of data center equipment which is a
16 part of such data center (whether or not
17 owned by the taxpayer), plus

18 “(ii) except as provided in subpara-
19 graph (C), the aggregate amount of the
20 adjusted depreciation deductions for each
21 data center asset (other than assets taken
22 into account under clause (i)) which is a
23 part of such data center and owned by the
24 taxpayer.

1 In any case in which more than one taxpayer
2 provides data center services from a data center
3 using data center equipment not owned by any
4 such taxpayer, the amount determined under
5 clause (i) with respect to each such taxpayer
6 shall be allocated to each such taxpayer in pro-
7 portion to the data center services provided
8 from such data center by such taxpayer to the
9 data center services provided from such data
10 center by all such taxpayers.

11 “(B) ADJUSTED DEPRECIATION DEDUC-
12 TION.—The adjusted depreciation deduction
13 with respect to any property for any taxable
14 year shall be determined as follows:

15 “(i) IN GENERAL.—Except as other-
16 wise provided in this subparagraph, the ad-
17 justed depreciation deduction with respect
18 to any property for any taxable year is the
19 amount of the deduction allowable for de-
20 preciation (or amortization in lieu of de-
21 preciation) with respect to such property
22 for such taxable year.

23 “(ii) SPECIAL RULE FOR LAND.—In
24 the case of any data center asset which is
25 unimproved land, such property shall be

1 treated as nonresidential real property for
2 purposes of determining the data center
3 depreciable asset use amount under this
4 paragraph.

5 “(iii) SPECIAL RULE FOR ASSETS
6 WITH ZERO BASIS.—In the case of any tax-
7 able year which includes the taxable year
8 in which the applicable recovery period
9 with respect to any data center asset ends
10 or any succeeding taxable year in which
11 such property is a part of the hyperscale
12 data center, the adjusted depreciation de-
13 duction with respect to such asset shall be
14 equal to—

15 “(I) in the case of the taxable
16 year in which the applicable recovery
17 period with respect to any data center
18 asset ends, 100 percent of the amount
19 determined under this subparagraph
20 for the preceding taxable year, and

21 “(II) in the case of any taxable
22 year following the taxable year de-
23 scribed in subclause (I) in which such
24 property is a part of the hyperscale

1 data center, 80 percent of the amount
2 determined under subclause (I).

3 “(iv) DISPOSED PROPERTY.—In the
4 case of any taxable year in which property
5 is disposed of, the adjusted depreciation
6 deduction with respect to such property for
7 such taxable year shall be the excess (if
8 any) of the original basis of such property
9 over the adjusted depreciation deductions
10 taken into account by the taxpayer under
11 this section for all preceding taxable years.

12 “(v) SPECIAL RULES FOR PROPERTY
13 PLACED IN SERVICE ON OR BEFORE DATE
14 OF ENACTMENT.—In the case of any prop-
15 erty placed in service in a taxable year be-
16 ginning on or before the date of the enact-
17 ment of this section—

18 “(I) the amount of the adjusted
19 depreciation deduction for such prop-
20 erty shall be calculated as if no deduc-
21 tion had been allowed with respect to
22 such property under subsection (k) or
23 (m) of section 168, and

24 “(II) for purposes of clause (iv),
25 the original basis of such property

1 shall be reduced by adjusted deprecia-
2 tion deductions which would have
3 been taken into account under this
4 section if this section applied to all
5 taxable years ending on or before the
6 date of the enactment of this section.

7 “(vi) SPECIAL RULE FOR LEASED
8 DATA CENTER EQUIPMENT.—In the case of
9 any data center equipment which is not
10 owned by the taxpayer, the adjusted depre-
11 ciation deduction shall be the greater of—

12 “(I) the amount determined
13 under this subparagraph (determined
14 without regard to this clause), or

15 “(II) the cost to the taxpayer to
16 lease or use such property.

17 “(C) ELECTION TO TREAT CERTAIN DATA
18 CENTER ASSETS AS AN APPLICABLE DATA CEN-
19 TER COST.—

20 “(i) IN GENERAL.—At the election of
21 the taxpayer, applicable property shall not
22 be taken into account under subparagraph
23 (A)(ii) and the cost of such property shall
24 be treated as an applicable data center cost

1 in the year such property is placed in serv-
2 ice.

3 “(ii) APPLICABLE PROPERTY.—For
4 purposes of this subparagraph, the term
5 ‘applicable property’ means any property
6 described in subparagraph (A)(ii) which
7 has a recovery period of 3 years or less.

8 “(iii) ELECTION.—An election under
9 this subparagraph shall be made at such
10 time and in such manner as the Secretary
11 shall provide and shall apply to applicable
12 property at all data centers from which the
13 taxpayer provides data center services.
14 Such election, once made, may not be re-
15 voked before the end of the 5-taxable year
16 period beginning with the first taxable year
17 to which such election applies.

18 “(3) APPLICABLE DATA CENTER COSTS.—For
19 purposes of this subsection, the term ‘applicable
20 data center costs’ means, with respect to any data
21 center, the costs paid or incurred by the taxpayer re-
22 lated to the provision of data center services from
23 such data center, including any rent or lease pay-
24 ments for the use of data center assets, any pay-
25 ments for energy and water, wages and payments

1 for services, and all other direct or allocable costs re-
2 lated to such data center.

3 **“SEC. 5000G. ORBITAL DATA CENTERS.**

4 **“[In development.]**

5 **“SEC. 5000H. DEFINITIONS AND SPECIAL RULES.**

6 **“(a) DEFINITIONS.—**For purposes of this chapter—

7 **“(1) DATA CENTER OPERATOR.—**The term
8 ‘data center operator’ means any person who pro-
9 vides data center services from a data center.

10 **“(2) DATA CENTER SERVICES.—**The term ‘data
11 center services’ means—

12 **“(A)** data storage services, cloud services,
13 artificial intelligence training services, inference
14 services, high-volume data processing, any serv-
15 ices or activities similar to the foregoing, and
16 such other services as determined by the Sec-
17 retary to be comparable to any of the foregoing,

18 **“(B)** any services which involve the use of
19 data center equipment which is located in a
20 data center that has peak electrical demand of
21 25 megawatts or greater, and

22 **“(C)** any other service—

23 **“(i)** which involves the use of data
24 center equipment to process, store, or
25 transmit digital information, and

1 “(ii) the provision of which is a sub-
2 stantial element of the trade or business of
3 the taxpayer.

4 For purposes of subparagraph (B), all data centers
5 located on a single property or on contiguous or con-
6 nected properties shall be treated as a single data
7 center.

8 “(3) DATA CENTER EQUIPMENT.—The term
9 ‘data center equipment’ means any electronic equip-
10 ment which is—

11 “(A) used to process, store, and transmit
12 digital information, and

13 “(B) housed together in a location that
14 contains environmental control equipment to
15 maintain the proper conditions for the oper-
16 ation of such equipment.

17 “(4) DATA CENTER.—

18 “(A) IN GENERAL.—The term ‘data cen-
19 ter’ means the facility or location which houses
20 data center equipment and is located in the
21 United States.

22 “(B) EXCEPTION FOR INTERNET INFRA-
23 STRUCTURE DATA CENTERS.—

1 “(i) IN GENERAL.—The term ‘data
2 center’ shall not include any internet infra-
3 structure data center.

4 “(ii) INTERNET INFRASTRUCTURE
5 DATA CENTER.—The term ‘internet infra-
6 structure data center’ means any data cen-
7 ter substantially all of the data center
8 equipment of which is used for the purpose
9 of—

10 “(I) web hosting,

11 “(II) domain registration, or

12 “(III) providing broadband inter-
13 net access service (as defined in sec-
14 tion 8.1(b) of title 47, Code of Fed-
15 eral Regulations (or any successor
16 regulation)).

17 “(C) IT DEPARTMENT DATA CENTER SAFE
18 HARBOR.—

19 “(i) IN GENERAL.—The term ‘data
20 center’ shall not include any IT depart-
21 ment data center for any taxable year if—

22 “(I) no person providing data
23 center services from such data center
24 is a hyperscale entity (as defined in
25 section 5000F(b)(5)),

1 “(II) the data center services
2 provided to customers from the data
3 center do not substantially consist of
4 data storage, cloud computing, high-
5 volume data processing, artificial in-
6 telligence services, or such other simi-
7 lar services identified by the Sec-
8 retary, and

9 “(III) the data center meets the
10 requirements of clause (ii).

11 “(ii) REQUIREMENTS.—A data center
12 meets the requirements of this clause if—

13 “(I) the aggregate amount of de-
14 ductions attributable to data center
15 equipment allowed to each person pro-
16 viding data center services from such
17 data center is less than 5 percent of
18 the aggregate amount of all deduc-
19 tions allowed to such person for the
20 taxable year, or

21 “(II) the unadjusted basis of all
22 data center equipment with respect to
23 the data center is less than
24 \$25,000,000.

1 “(5) DATA CENTER ASSET.—The term ‘data
2 center asset’ means, with respect to any data cen-
3 ter—

4 “(A) any item of data center equipment,

5 “(B) any building or structure used to
6 house data center equipment,

7 “(C) the land on which such data center is
8 located, and

9 “(D) any other asset which is—

10 “(i) located in a building or structure
11 described in subparagraph (B) or on land
12 described in subparagraph (C), and

13 “(ii) used in the operation of such
14 data center.

15 “(b) REGULATIONS.—The Secretary shall issue such
16 regulations or other guidance as may be necessary or ap-
17 propriate to carry out, or prevent avoidance of, the pur-
18 poses of this chapter, including regulations relating to the
19 allocation of data center gross receipts.”.

20 (b) TAX TO BE NON-DEDUCTIBLE.—Section
21 275(a)(6) of the Internal Revenue Code of 1986 is amend-
22 ed by inserting “50B,” after “50A,”.

23 (c) CLERICAL AMENDMENT.—The table of chapters
24 for subtitle D of the Internal Revenue Code of 1986 is
25 amended by adding at the end the following new item:

“CHAPTER 50B—DATA CENTERS”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

4 **SEC. 3. REPEAL OF BONUS DEPRECIATION FOR DATA CEN-**
5 **TER ASSETS.**

6 (a) IN GENERAL.—Section 168(k)(2) of the Internal
7 Revenue Code of 1986 is amended by adding at the end
8 the following new subparagraph:

9 “(I) EXCEPTION FOR DATA CENTER AS-
10 SETS.—

11 “(i) IN GENERAL.—The term ‘quali-
12 fied property’ shall not include any large
13 data center asset.

14 “(ii) LARGE DATA CENTER ASSET.—
15 For purposes of this subparagraph, the
16 term ‘large data center asset’ means any
17 asset described in section 5000H(a)(5)
18 with respect to a data center (as defined in
19 section 5000H(a)(4)) which has peak elec-
20 trical demand of 25 megawatts or greater
21 at any time during the taxable year in
22 which the asset is placed in service. For
23 purposes of this clause, all data centers lo-
24 cated on a single property or on contiguous

1 or connected properties shall be treated as
2 a single data center.”.

3 (b) QUALIFIED REUSE AND RECYCLING PROP-
4 ERTY.—Section 168(m)(2)(B) of such Code is amended
5 by adding at the end the following new clause:

6 “(iv) EXCEPTION FOR DATA CENTER
7 ASSETS.—The term ‘qualified reuse and
8 recycling property’ shall not include any
9 large data center asset (as defined in sub-
10 section (k)(2)(I)(ii)).”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to property placed in service in
13 taxable years beginning after the date of the enactment
14 of this Act.

15 **SEC. 4. TREATMENT UNDER OPPORTUNITY ZONES.**

16 (a) QUALIFIED OPPORTUNITY ZONE BUSINESSES.—
17 Section 1400Z–2(d)(3)(A)(iii) of the Internal Revenue
18 Code of 1986 is amended by inserting “or which consists
19 of providing data center services (as defined in section
20 5000H(a)(2))” after “section 144(c)(6)(B)”.

21 (b) QUALIFIED OPPORTUNITY ZONE BUSINESS
22 PROPERTY.—Section 1400Z–2(d)(2)(D) of such Code is
23 amended by adding at the end the following new clause:

1 “(iv) EXCEPTION.—Such term shall
2 not include any large data center asset (as
3 defined in section 168(k)(2)(I)(ii)).”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to stock, capital or profits inter-
6 ests, and property acquired in taxable years beginning
7 after the date of the enactment of this Act.

8 **SEC. 5. RENTS RECEIVED BY PRIVATE REAL ESTATE IN-**
9 **VESTMENT TRUSTS FROM DATA CENTERS.**

10 (a) IN GENERAL.—Section 856(d)(2) of the Internal
11 Revenue Code of 1986 is amended by striking “and” at
12 the end of subparagraph (B)(ii), by striking the period at
13 the end of subparagraph (C) and inserting “; and”, and
14 by adding at the end the following:

15 “(D) in the case of a corporation in which
16 shares representing less than 80 percent of the
17 stock in such corporation (by vote or value) are
18 classes of stock which are regularly traded on
19 a national securities exchange which is reg-
20 istered with the Securities and Exchange Com-
21 mission, any amounts attributable to a data
22 center (as defined in section 5000H(a)(4))
23 which has peak electrical demand of 25
24 megawatts or greater and is acquired after the
25 date of the enactment of this subparagraph.

1 For purposes of subparagraph (D), all data centers
2 located on a single property or on contiguous or con-
3 nected properties shall be treated as a single data
4 center.”.

5 (b) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to amounts received in taxable
7 years beginning after the date of the enactment of this
8 Act.

9 **SEC. 6. DISALLOWANCE OF RESEARCH CREDIT FOR EX-**
10 **PENSES PAID FOR DATA CENTER EQUIP-**
11 **MENT.**

12 (a) IN GENERAL.—Section 41(b)(2)(C) of the Inter-
13 nal Revenue Code of 1986 is amended by striking “and”
14 at the end of clause (i), by striking the period at the end
15 of clause (ii) and inserting “, and”, and by adding at the
16 end the following new clause:

17 “(iii) any amount paid or incurred for
18 data center equipment (as defined in sec-
19 tion 5000H(a)(3)).”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to amounts paid or incurred in tax-
22 able years beginning after the date of the enactment of
23 this Act.

24 (c) NO INFERENCE.—Nothing in this section or the
25 amendments made by this section shall be construed to

1 create any inference with respect to the treatment under
2 section 41 of the Internal Revenue Code of 1986 of ex-
3 penses for data center equipment (as defined in section
4 5000H(a)(3) of such Code, as added by section 2) in tax-
5 able years beginning on or before the date of the enact-
6 ment of this Act.