NetChoice

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Testimony for

Maryland Senate
Budget and Taxation Committee

SB 397
Sales and Use Tax and Personal Property Tax – Exemptions – Data Centers

February 12, 2020

Chairman Guzzone and members of the committee, NetChoice[1] is a trade association of businesses who share the goal of making the internet safe for free enterprise and for free expression. We work to promote the integrity and availability of the global internet and are significantly engaged in issues in the states, in Washington, DC and in international internet governance organizations.

We are pleased to present at your hearing ***SB 397 --*** *Sales and Use Tax and Personal Property Tax – Exemptions – Data Centers.* However, NetChoice members (AoL, eBay, Expedia, Facebook, Google, Twitter and many others) don't think of themselves as the "data center industry." Rather, they're the industry that enables Americans to find information, to create and connect, to buy and sell, to navigate their world, and to maintain their memories – in stored communications, docs, photos, and videos.

Data centers contain essential production equipment to deliver these services, so our members are eager to see Maryland join other states who recognize that to attract capital-intensive large data centers, it is necessary to allow the same sales tax treatment they have allowed for decades on equipment needed for other capital-intensive industries like manufacturing and agriculture.

Moreover, data centers are recession-proof, with high-paying tech jobs. Where our companies have invested in enterprise data centers, they contribute significantly to local taxes and are strong supporters of education and broadband expansion. And those investments continue, as our companies add data centers to established campuses such as this Facebook facility near Columbus, Ohio.

Facebook's initial 970,000 SF center cost $750 million, making it the largest commercial project in the city.

Construction brought $244 million to the local supply chain and 1,200 construction workers earned $78 million in wages.

Across the street, Google is planning a $600 million, 275,000 SF data center on 440 acres, setting the potential for future expansion.[2]

Our testimony includes the perspectives of an economic development official and a lawmaker who helped Virginia become the world's leading location for data centers.

[1] NetChoice is a trade association of leading e-Commerce and online businesses, at www.netchoice.org The views expressed here do not necessarily represent the views of every NetChoice member company.

[2] Columbus Business First (Apr-2019) *Facebook's New Albany data center will be much bigger than originally planned"*

Virginia's journey to becoming the world leader for data centers

Most NetChoice members store data where Barbara and Steve live -- Northern Virginia, the world's #1 concentration of data centers. That's where these companies store your emails, documents, photos and videos of your cute kids and grandchildren. Data centers provide millions in tax revenue and thousands of jobs, serving as the backbone of Virginia's tech industry while helping diversity the state's economy.

A new study by Mangum Economics[3] counts these Virginia benefits attributable to data centers in 2018:

45,290 jobs

$ 3.5 Billion in labor income

$10.1 Billion in economic output

Regarding earnings for data center workers, the 2020 Virginia study found that average annual wages in the data center industry doubled to just over $126,000 between 2001 and 2018, growing "almost twice as fast as the average private sector employee in Virginia".

In 2018, data centers made $2.6 billion in capital investments across Virginia, supporting 4,617 jobs, $254 million in labor income, and $670 million in economic output in the state's construction industry.

Moreover, these data centers generate significant tax revenue for local governments. In Loudoun and Prince William Counties, the benefit-to-cost ratio for data centers is more than 8-to-1. For every dollar spent by county governments related to data centers, they realized at least $8 in new tax revenue.

But it took a purposeful economic development approach to make this happen.

In the late 1990's, Governor Jim Gilmore appointed Steve to the board of Virginia's economic development agency (Virginia Economic Development Partnership). Virginia was keen to pursue economic development for a growing Internet industry that already had two important anchors in the Commonwealth. America Online was based in Northern Virginia. And the Metro Area Exchange (MAE-East) handled half of American's internet traffic – in a parking garage in Tysons Corner, where Steve's software business was headquartered.

But it soon became clear that Aol and MAE-East was not enough to win the most significant data center location competition of that time. In 2011, Virginia lost out to North Carolina on the construction of a billion-dollar data center that Apple was planning. What tipped the balance in favor of the Tar Heel State was an ongoing commitment to update their sales tax structure to attract data centers.

Apple's decision was a wake-up call that made it clear Virginia had to constantly update its business and tax environment in an increasingly high-stakes competition for the jobs and investments of the 21st century. That's where Virginia Delegate Barbara Comstock rose to the challenge.

In 2012, Barbara served in the Virginia General Assembly and introduced legislation to update the tax code for data centers. A bipartisan, state-wide coalition, and the leadership of the Northern Virginia Technology Council, resulted in near unanimous passage.

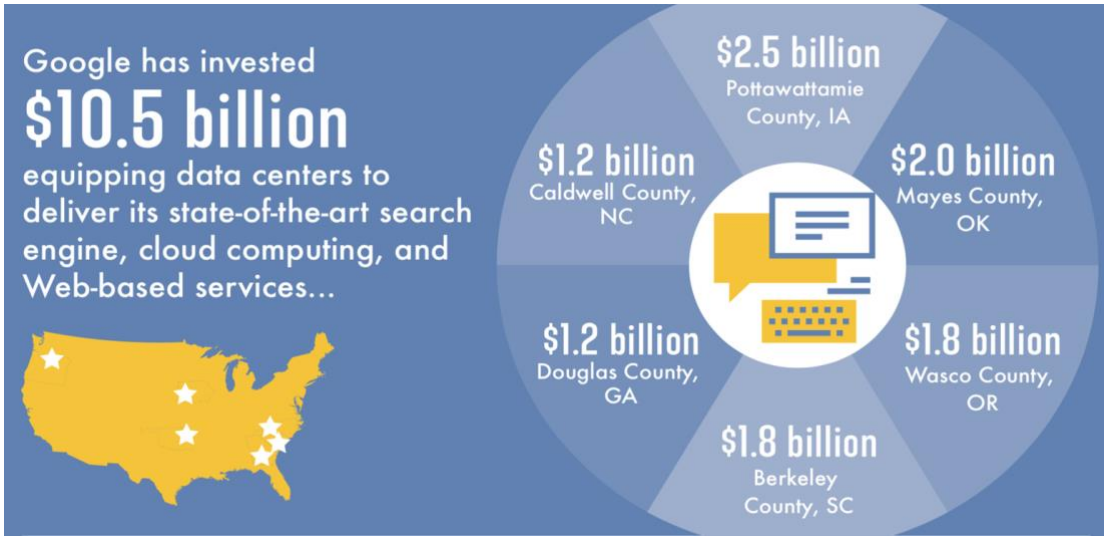
In 2016, the legislation was further updated and provided more certainty for data centers. These bills gained the signatures of Republican Gov. Bob McDonnell and Democratic Gov. Terry McAuliffe. All understood that data centers were the basic infrastructure for innovation, for the future, and for nurturing high-paying jobs. Virginia opened the door to billions of dollars of investments in the form of

[3] Jan-2020, Mangum Economics, *THE IMPACT OF DATA CENTERS ON THE STATE AND LOCAL ECONOMIES OF VIRGINIA*, at https://www.nvtc.org/NVTC/Insights/Resource_Library_Docs/2020_NVTC_Data_Center_Report.aspx?_zs=doEs91&_zl=5cbX5

high-tech data processing and hosting centers, and Virginia remains the number one state for data centers—in the world. (see Annex 1 for Barbara Comstock's Feb-2019 editorial describing the full story).

Large-scale enterprise data centers are now in several states that established a data center sales tax exemption

The experience of Virginia has been repeated in several other states that established a data center exemption like that allowed for manufacturing and agricultural production equipment. Oxford Economics prepared this infographic to summarize its study of six Google data centers in rural and suburban counties in Iowa, Oklahoma, Oregon, South Carolina, Georgia, and North Carolina.



Oxford also studied the broader income and economic activity effects of those six Google data centers, finding $750 million in labor income and $1.3 billion in activity.

Google's recent announcement that it will double its data center and office footprint in Virginia, coupled with Amazon choosing the commonwealth as its second headquarters, show that Virginia's commitment to creating an attractive technology business climate is delivering results *and* incremental tax revenue.

Enterprise data centers bring Incremental economic benefits *and* incremental tax revenue

Not only do high wages in the data center industry offer a vital new employment option, but these centers also are a driving force in the development of renewable energy resources and upgrades to utilities and internet infrastructure. Moreover, the data centers generate new income and business taxes, sales taxes on non-exempt purchases and electricity, and local property taxes.

For that reason, we encourage Maryland to adopt a "**Here vs Not here**" analysis of whether to establish a data center exemption like that allowed for manufacturing and agriculture. This recognizes the reality that over the last five years, no enterprise data center has located in states that impose their full sales tax burdens on data center server equipment.

The decision to establish a data center sales tax exemption still generates incremental tax revenue—despite the sales tax exemption on data center equipment. The first table lists several economic benefits that accrue if the Commonwealth is successful in attracting large enterprise data centers:

Incremental economic benefits of data centers	Here	Not here
Income & spending by construction workers & contractors	+	0
Income & spending by data center employees	+	0
Revenue for local suppliers, contractors, lodging, and restaurants	+	0
High-tech training and experience for workforce	+	0
Make the state more attractive for tech business and education	+	0
Diversify local economies	+	0

In 2018 alone, data centers generated more than $250 million in local tax revenue for Loudoun county in Virginia — 85 percent of which comes from personal property taxes on data center equipment. That money supports local schools, law enforcement, and reduced tax increases on families and homeowners. Now these benefits are spreading to counties across Virginia.

This second table lists several incremental tax revenue opportunities from data center construction and operation—even after establishing a data center exemption:

Incremental tax revenue from data centers	Here	Not here
Income taxes paid by employees and contractors	+	0
Corporate income taxes from data center operators & contractors	+	0
Sales taxes on non-exempt equipment and supplies	+	0
Lodging taxes for visits by contractors and workers	+	0
Sales taxes on business services	+	0
Local real estate & personal property taxes	+	0

In June of 2019, Virginia's Joint Legislative Audit and Review Commission (JLARC) published its audit report and evaluation of Virginia's tax incentives for data centers, using confidential tax information from data center taxpayers[4]. JLARC concluded that 90 percent of the investment in data centers eligible for the sales tax exemption would *not* have made in Virginia were it not for those tax exemptions. Those investments would have been made in other states that give data center equipment the same tax exemptions long given on equipment used in manufacturing and agriculture.

As Mangum concluded in its 2020 Virginia Study, "*the 'cost' of the State data center incentive is only 10 percent of the amount of State sales tax revenue exempted*." [5] In fact, JLARC's analysis showed that Virginia recovered $1.09 in state tax revenue for every dollar of sales tax that was exempted for data center equipment purchases in 2017.[6]

Idaho's legislative services embraced this "Here vs Not here" analysis in their Fiscal Note for a 2019 data center tax exemption bill, H 279:

> *There is no fiscal impact for business entities qualifying after January 1, 2019 with investments of at least $250 million. An investment that large could produce up to $15 million in sales taxes. But at least 17 other states offer the sales tax exemption for server equipment, and if Idaho does not offer an equivalent exemption, these businesses will very likely locate in states other than Idaho that do provide the exemption.*
>
> *Accordingly, there is no loss of tax revenue from businesses that would not locate in Idaho without the exemption, and there is likely an increase in revenue from taxes related to the growth these businesses would promote.*[7]

States are competing to attract enterprise data centers

While Virginia made itself the largest and most active data center market in the nation, with 70 percent of the world's internet traffic flowing through the state, it's clear that the landscape for attracting and retaining data centers has changed. Unlike a decade ago when only five states had tax structures that were welcoming to data centers, today there are 31 states, as seen in the map below[8]:

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[4] Joint Legislative Audit and Review Commission (JLARC), *Data Center and Manufacturing Incentives, Economic Development Incentives Evaluation Series*. 17-Jun-2019.

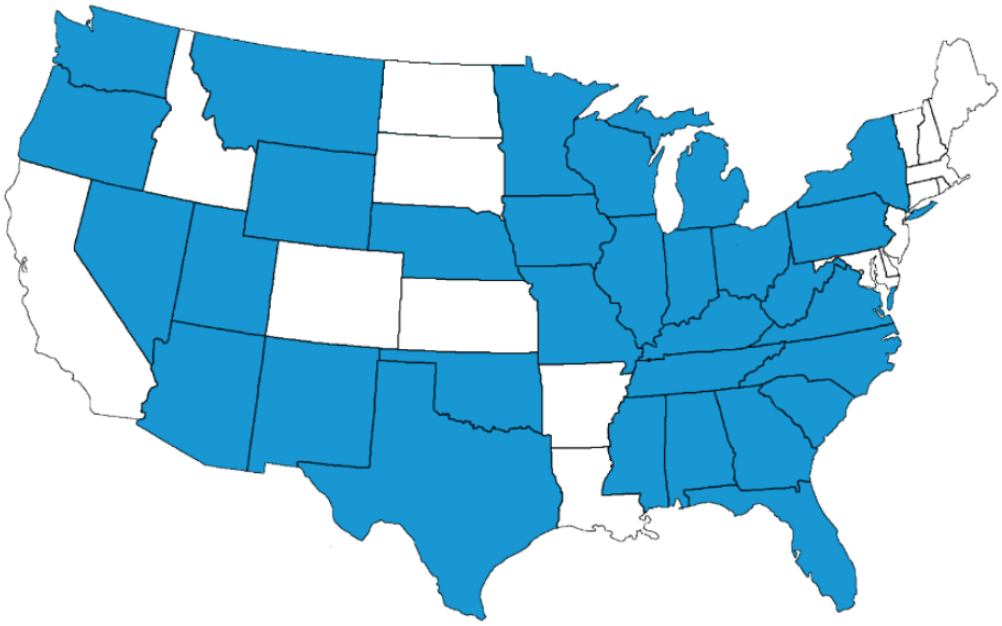
[5] Jan-2020, Mangum Economics, *THE IMPACT OF DATA CENTERS ON THE STATE AND LOCAL ECONOMIES OF VIRGINIA*, p.24, at https://www.nvtc.org/NVTC/Insights/Resource_Library_Docs/2020_NVTC_Data_Center_Report.aspx?_zs=doEs91&_zl=5cbX5

[6] JLARC Evaluation, Appendix N: Results of economic and revenue impact analysis, at http://jlarc.virginia.gov/pdfs/oversight/ED_initiatives/datacenters_Appendix%20N.pdf

[7] Mar-2019, Fiscal Note for Idaho House Bill 297, at https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2019/legislation/H0279SOP.pdf

[8] 2020 Mangum study for Virginia, page 32.

Figure 7. States with Active Data Center Incentives



Ohio's Economic Development Agency approved 40 years of sales tax exemptions for $2.5 billion in data center investments in just the last 2 years.

Indiana had no sales tax incentives – and no enterprise data centers – until last summer, when their House voted 95-1 and Senate voted 46-0 to allow 50 years of sales tax exemption for data center investments over $750 million.

Support for SB 397 – with suggested amendment

For Maryland to compete for large enterprise data centers that have yet to locate here, the state should establish a data center exemption like that allowed for manufacturing and agriculture.

Consider this memo from Senator Scott Hutchinson, sponsor of Pennsylvania's legislation to permanently exempt data center equipment from sales tax:

> "Similar to sales tax exemptions for other industries in the state such as dairying, farming, manufacturing and mining, this incentivizes companies to locate their data centers in Pennsylvania, creating capital investment and high paying jobs as a result"
>
> "It promotes economic growth; fosters Pennsylvania's workforce development through the creation of high-paying, high-tech jobs in computer data centers and related industries. I urge you to support this sales tax exemption for data centers, an industry that represents the future for Pennsylvania."[9]

SB 397 gets part of the way there, by allowing up to 10 years of sales tax exemption on data center equipment. But 10 years does not nearly match the term over which data centers replace and upgrade their servers and equipment. Competing states offer much longer-term or even permanent exemptions, so 10 years should not be expected to attract a large enterprise data center to Maryland.

[9] Co-Sponsorship Memoranda for Pennsylvania bill SB 471, by Senator Scott Hutchinson, 21-Feb-2019, at https://www.legis.state.pa.us//cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=28472

SB 397 also neglects to apply to data centers the current sales tax exemption for electricity used in manufacturing and agricultural production[10]. You can appreciate the importance of this exemption given that electricity represents the majority of operating expenses for a large data center.

In order for Maryland to compete with other states in attracting large enterprise data centers, we suggest the following be added to SB 397:

> (E) FOR A QUALIFIED DATA CENTER THAT HAS INVESTED AT LEAST $250,000,000 IN IMPROVEMENTS, AN EXEMPTION CERTIFICATE ISSUED BY THE COMPTROLLER UNDER THIS SECTION MAY BE RENEWED FOR UP TO 20 CONSECUTIVE YEARS AND SHALL INCLUDE AN EXEMPTION FROM STATE AND LOCAL SALES AND USE TAX ON ELECTRICITY PURCHASED AND CONSUMED BY THE QUALIFIED DATA CENTER.

In conclusion, please consider what was said by the county manager where Apple built that data center in North Carolina:

> *"I highly recommend it — take 'em if you can get 'em. Otherwise, send them to us."*
>
> *"It's our single biggest taxpayer, generating revenue to the county of almost $1.5 million and employing 400 or 500 people.*
>
> *It was as close to a no-brainer as you get in this business."*
>
> Mick Berry, Manager, Catawba County, NC

We thank you for your consideration and look forward to your questions.

[10] Maryland Form SUT206, Exemption Certification for Utilities or Fuel Used in Production Activities, at https://www.marylandtaxes.gov/forms/current_forms/ST-206.pdf

Annex A:

Richmond Times-Dispatch

Data centers keep Virginia a strong leader in the 21st-century tech economy

By Barbara Comstock - Published Feb 26, 2019

In 2011, Virginia lost out to North Carolina on the construction of a $1 billion data center that Apple was planning. What tipped the balance in favor of the Tar Heel State was an ongoing commitment to update their tax structure to remain competitive in attracting this 21st-century booming business.

Up until that time, Virginia had been the leader in courting these next-generation businesses and jobs, and this wake-up call made it clear that we had to constantly update the commonwealth's business environment in an increasingly high-stakes competition for the jobs and investments of the 21st century.

In 2012, I served in the Virginia General Assembly and introduced legislation to update our tax code for data centers. A bipartisan, commonwealth-wide coalition, and the leadership of the Northern Virginia Technology Council, resulted in near unanimous passage. In 2016, Del. Tim Hugo, R-Fairfax, further updated the legislation and provided more certainty for growing data centers. These bills gained the signatures of Republican Gov. Bob McDonnell and Democratic Gov. Terry McAuliffe.

Working together, Virginia opened the door to billions of dollars of investments in the form of high-tech data processing and hosting centers, and we remain the No. 1 state for data centers. Google's recent announcement that it will double its data center and office footprint in Virginia, coupled with Amazon choosing the commonwealth as its second headquarters, show that our commitment to creating an attractive technology business climate is delivering results and revenue. Data centers are the backbone of that commitment.

Not only do the high wages in the data center industry offer a large source of state income tax revenue for our state, but these centers also are a driving force in the development of renewable energy resources, new roads, and utility and internet upgrades.

Loudoun County Economic Development Executive Director Buddy Rizer is correct when he asserts that it is not an accident that these high-tech investments are being made in Virginia. Loudoun County is the No. 1 data center market in the world — by a factor of two to three times. Virginia has made a clear choice: to support high-tech data center investments that now attract some of the most advanced technology companies and Fortune 1000 enterprises engaged in the latest in technology.

As of February 2018, the Northern Virginia Technology Council reported that the data center industry had created more than 43,000 new jobs in Virginia, contributing $3.2 billion in labor income and over $10 billion in economic output. In 2016 alone, the high-tech industry made $2.6 billion in capital investments in data centers, creating more than 4,600 new jobs.

In 2018, Loudoun County welcomed more than $5 billion in investment, and the creation of nearly 1,000 new jobs; and this year alone, data centers will generate more than $250 million in local tax revenue for the county — 85 percent of which will come from personal property taxes on data center equipment. That is money that goes to supporting the local schools, law enforcement, and has resulted in lowering personal property tax increases on families and homeowners. Now these benefits are spreading to counties across the commonwealth.

While Virginia has made itself the largest and most active data center market in the nation, with 70 percent of the world's internet traffic flowing through our state, make no mistake: The landscape for attracting and retaining data centers has changed. Unlike a decade ago when only five states had tax structures that were welcoming to data centers, today that number has grown to 30 and the competition is fierce.

It is true that Virginia has been a leader in data centers in the past, but we have to stay vigilant to ensure our policies remain strongly competitive to retain this growing industry. Leaders in Richmond, on both sides of the aisle, are to be commended for understanding that data centers are a tremendous opportunity for the entire commonwealth and for their own communities, and that the strong bipartisan policy of Virginia has allowed us to be a technology front-runner, with the workforce to support the economy of the future.

Barbara Comstock is a former U.S. representative from Virginia's 10th District; she also served from 2010-14 in the Virginia House of Delegates, where she was chairwoman of the Science and Technology Committee. She is an adviser to NetChoice, and may be contacted at Barbara@comstockstrategy.com.