



**Computer Data Center Program**  
(Established under A.R.S. § 41-1519)

---

**INSTRUCTIONS FOR  
APPLICATION FOR CDC CERTIFICATION<sup>1</sup>**

---

**A. Background**

The Arizona Legislature in 2013 established the Computer Data Center program (the Program). The Program is administered by the Arizona Commerce Authority (Commerce) in conjunction with the Arizona Department of Revenue (Revenue). Commerce is authorized to accept applications for certification in accordance with the Program during the period between September 1, 2013 and December 31, 2023. The objective of the Program is to encourage computer data center (CDC) operation and expansion in Arizona. The Program accomplishes this objective by providing Transaction Privilege Tax (TPT) and Use Tax exemptions at the state, county and local levels, on qualifying purchases of CDC Equipment.

In general, an Owner, Operator or Qualified Co-location Tenant of a CDC can receive the exemptions provided by the Program for up to ten full calendar years following the year in which the CDC certification is issued. However, if the CDC qualifies as a Sustainable Redevelopment Project, the exemptions are available for up to 20 full calendar years following the year in which the CDC certification is issued.

The TPT and Use tax exemptions provided by the Program are available if *all* of the following are satisfied:

1. An Applicant submits an Application for CDC Certification (Application) and receives a Letter of Certification from Commerce.
2. The CDC Owner, Operator and/or Qualified Co-location Tenant collectively satisfy the requisite Capital Investment Threshold in a timely manner and the Applicant submits to Commerce evidence of satisfaction of one of the following:
  - a) If the CDC Facility is located in either Maricopa or Pima County, a Capital Investment of at least \$50 million is made within five years of the date of the Letter of Certification from Commerce. **OR**
  - b) If the CDC Facility is located in any county other than Maricopa or Pima, a Capital Investment of at least \$25 million is made within five years of the date of the Letter of Certification from Commerce. **OR**
  - c) In the case of an Existing CDC, regardless of location, a Capital Investment of at least \$250 million was made during the period between September 1, 2007 and August 31, 2013.

---

<sup>1</sup> Certain capitalized terms not otherwise defined herein are defined in Part C below.

3. The Applicant remits a non-refundable processing fee equal to \$50.00 at the time of certification of the CDC, and, as applicable, remits a separate non-refundable processing fee equal to \$50.00 for each Qualified Co-location Tenant receiving certification.
4. All relevant parties comply with the employer requirement set forth in A.R.S. §§ 23-214(B).

## **B. Submittal and Processing of Applications**

1. Beginning September 1, 2013 and concluding December 31, 2023, an Applicant may submit an Application in accordance with the Program by using Commerce's "Electronic Application System" (EASY). Any other method of delivery of an Application, including U.S. mail, fax or e-mail, is impermissible and will not be accepted by Commerce.
2. Supplemental documentation required by Commerce in connection with an Application, includes the following as may be applicable:
  - a) An Applicant must submit proof of registration with the federal E-Verify program. Further, each Qualified Co-location Tenant must also submit proof of its registration with the federal E-Verify program in order to receive its own certification.
  - b) An Applicant seeking certification under A.R.S. § 41-1519(E)(1) must at the time of the Application certify that the CDC intends to satisfy the requisite Capital Investment Threshold. To maintain its certification, the Applicant is required to demonstrate within five years of the date of the Letter of Certification that the relevant Capital Investment Threshold has been satisfied.
  - c) An Existing CDC seeking certification under A.R.S. § 41-1519(E)(2) must at the time of the Application:
    - i. Demonstrate that the \$250 million Capital Investment Threshold was timely satisfied. This may be accomplished through submittal of a copy of the most recently filed Arizona Business Property Statements by the Owner, Operator and/or Qualified Co-location Tenants of the CDC. Other acceptable Capital Investment documentation may include copies of: one or more real estate settlement sheets, county affidavits of property value, lease agreements for CDC Equipment, paid invoices along with the associated cancelled checks, or IRS Form 4562 and all supporting schedules that identify, at a minimum, the items of property acquired, the date acquired, location and its cost.
    - ii. If the \$250 million Capital Investment was made by two or more affiliated entities that file a consolidated or combined Arizona tax return, a list of the name and address of each of the affiliated companies must be provided.
  - d) An Applicant seeking certification of the CDC as a Sustainable Redevelopment Project must, either at the time of Application or within five years of the date of

the Letter of Certification, demonstrate that the CDC satisfies one of the following requirements:

- i. The Facility that the Applicant occupies or will occupy was at least fifty percent vacant for at least six months before the acquisition whether by purchase or lease. Acceptable documentation may include an affidavit from the seller, purchaser or lessor of the Facility (other than the Applicant) attesting to the vacancy.
  - ii. The Facility that the Applicant occupies or will occupy attained a green building standard (Green Globe, Energy Star, LEED or other similar building standard) certification on or after acquisition. Acceptable documentation in such a case includes a copy of the green building standard certificate issued for the Facility or other documentation acceptable to Commerce.
- e) Facilities at which Qualified Co-location Tenants occupy or will occupy all or part of the CDC must also provide Commerce the following information at the time of Application:
- i. Names, contact information and Tax Identification Numbers (TINs) of the Qualified Co-location Tenants;
  - ii. The commencement and expiration dates of each agreement between a Qualified Co-location Tenant and the Applicant; and
  - iii. Verification that the agreement with the Applicant to use or occupy all or a part of the CDC meets or exceeds 500 kilowatts per month for a period of two or more years.

Please note that any changes made to an Applicant's Qualified Co-location Tenants at a CDC must be reported to Commerce within 30 days of such a change. Failure to provide and maintain an updated list of Qualified Co-location Tenants with Commerce may result in revocation of the Applicant's certification.

3. An Applicant may divide a single CDC Facility into two or more Facilities when applying for certification of the CDC. Similarly, an Applicant may aggregate one or more Facilities in a single CDC Application. Limitations apply when either dividing or aggregating a Facility, including but not limited to:
  - a) Aggregation of separate Facilities is permissible as long as the Applicant made or intends to make at least ten percent (10%) of the applicable Capital Investment Threshold amount at each Facility for which such aggregation is sought in a single Application. If the Applicant is unable to demonstrate compliance with the requisite Capital Investment Threshold at each of the aggregated Facilities, the Letter of Certification for all relevant parties may be revoked.
  - b) If an Applicant aggregates two or more Facilities under A.R.S. § 41-1519(E)(1) that require different Capital Investment Thresholds (including if, for example, aggregated Facilities are situated in both Maricopa and Yavapai Counties), the

Applicant is required to satisfy the higher Capital Investment Threshold (i.e., \$50 million). If the Applicant is unable to demonstrate compliance with the requisite Capital Investment Threshold, the Letter of Certification for all relevant parties may be revoked.

- c) If an Applicant aggregates two or more Facilities and is seeking certification of the aggregated Facilities as a Sustainable Redevelopment Project, the Applicant is required to demonstrate that each of the Facilities separately meets the Sustainable Redevelopment Project standard. If the Applicant is unable to provide evidence corroborating that each such Facility separately qualifies as a Sustainable Redevelopment Project, the Qualification Period for all Facilities identified in the Application is limited to ten (rather than 20) full calendar years following the year in which the Letter of Certification is issued.
  - d) If an Applicant seeks to divide a Facility (including, for example, if an Applicant seeks to obtain certification for a portion of a building), the Applicant must specifically identify the distinct portion of the Facility and/or CDC Equipment for which the Applicant it is seeking certification.
4. Commerce will not issue multiple certifications for the same parcel, portion of land or building, condominium, Modular Data Center or CDC Equipment.
  5. The identical amount of Capital Investment may *not* be taken into consideration more than one time in determining whether any applicable Capital Investment Threshold has been satisfied. Thus, for example, if an Applicant obtains certification for a distinct portion of a building and makes a Capital Investment of \$60 million thereat, no portion of that same \$60 million Capital Investment can be considered if the Applicant later seeks certification for a different portion of the same building and seeks to demonstrate that the requisite Capital Investment Threshold at such different portion of the building has been satisfied.
  6. If an Applicant seeks certification for two or more non-aggregated Facilities, the Applicant must submit multiple Applications.
  7. During its review of an Application, Commerce may request additional information, conduct a site visit or otherwise discuss any deficiencies in the submitted Application with the Applicant. If an Applicant fails to provide additional information within 14 calendar days after request by Commerce (or up to 28 calendar days if the Applicant seeks and receives a compliance extension within the initial 14-day period), the Application will be considered “withdrawn.” If an Application is withdrawn, the provisions of A.R.S. § 41-1519(C) do not apply. In any such case, the Applicant may file a new Application form at a later date.
  8. An Applicant cannot make any significant changes to an Application after a Letter of Certification is issued. Commerce retains final authority on what constitutes a significant change. For example, modifications to the description of the certified CDC Facility are prohibited.

9. An Application (as well as any and all other supplemental documentation submitted to Commerce in connection with the Program) must contain a certification by an officer of the Applicant that the information contained therein is true and correct according to the best belief and knowledge of the officer after a reasonable investigation of the facts.
10. Commerce will attempt to make an eligibility determination with regard to each Application within 60 calendar days after the date of receipt of an Application. Commerce's failure to approve or deny the Application within the above time period constitutes certification of the CDC Facility. If Commerce does not respond within the requisite timeframe, a Letter of Certification will be issued to the Applicant within 14 calendar days following the 60 day period.
11. If it determines that the Applicant is qualified to receive Tax Relief under the Program, on or after September 12, 2013 (the effective date of the Program), Commerce will issue a Letter of Certification. Issuance of a Letter of Certification is also contingent on receipt of an initial processing fee of \$50.00 from the Applicant. Additional processing fees (\$50.00 per Qualified Co-location Tenant) will be required if the Applicant is also requesting certification of one or more of its Qualified Co-location Tenants. All processing fees must be paid by check, certified check or wire transfer. No other form of payment is permitted.
12. The Letter of Certification, among other things, identifies the name of the Applicant, the location(s) of the qualified CDC Facility or Facilities, a unique certification number, specification as to whether the certification is issued under A.R.S. § 41-1519(E)(1) or A.R.S. § 41-1519(E)(2) and the Qualification Period for which Tax Relief is available. Certification of a CDC is unaffected by the possible future transfer, sale or disposition of a CDC.
  - a) A Letter of Certification issued to an Applicant is effective as of the date of receipt by Commerce of the Application. A Letter of Certification issued to a Qualified Co-location Tenant is effective commencing on the later of either: i) the date of receipt by Commerce of the Application for the Facility, or ii) the commencement date of the agreement between the Qualified Co-location Tenant and the Applicant.
  - b) The Qualification Period will not extend beyond ten full calendar years following the year of issuance of a Letter of Certification by Commerce (or 20 full calendar years for a Facility satisfying the Sustainable Redevelopment Project standard). However, in the case of a Qualified Co-location Tenant, the Qualification Period will expire at the earlier of: i) the expiration date of the term as reflected in the agreement between the Applicant and the Qualified Co-location Tenant exclusive of lease extensions, or ii) the end of the Facility's Qualification Period. Consequently, the Qualification Period for a Qualified Co-location Tenant may be shorter in duration than the Qualification Period of the Facility at which the tenant is situated.

13. In order to qualify for Tax Relief, the relevant CDC Equipment must be delivered to a Facility (or portion thereof) identified in the Letter of Certification.
14. A Letter of Certification does not guarantee the receipt of Tax Relief under the Program because, among other reasons, a Letter of Certification is issued to a CDC certified under A.R.S. § 41-1519(E)(1) before Commerce determines the Applicant's compliance with the Program's Capital Investment Threshold. Further, receipt of Tax Relief is contingent upon a vendor waiving collection of the applicable tax on purchases of CDC Equipment.
15. After receipt of a Letter of Certification, the Owner, Operator or Qualified Co-location Tenant may claim exemptions for TPT under the retail classification and Use tax in accordance with the Program through the expiration of the applicable Qualification Period. The exemptions relate to the purchase price of the CDC Equipment and include all state, county and local level TPT or Use tax. If a prime contractor purchases the CDC Equipment for a certified Facility, the equipment purchase may be exempt from TPT or Use tax if the equipment will be incorporated into the real property or structure; however, the contract to construct the Facility or to make improvements to an Existing Facility does not qualify for Tax Relief and is subject to tax under the prime contracting classification. To qualify for the exemption at the time of purchase, the certified business must present a copy of its Letter of Certification from Commerce to the vendor or prime contractor as well as a completed [Revenue Form 5000](#) (exemption certificate).
16. If Commerce denies an Application, the Applicant may appeal the decision within 30 days by submitting a timely written request for a hearing or a notice of appeal with the Chief Operating Officer of Commerce (or delegate) pursuant to A.R.S. § 41-1092 *et seq.* The denial prohibits the Applicant from receiving Tax Relief under the Program unless the appeal is successful.
17. Information contained in an Application is considered proprietary business information and cannot be released to the public; provided, however, that Commerce and Revenue may disclose the name of the CDC that has been certified and Commerce and Revenue may also share all information necessary to administer the Program.
18. Revenue may revoke a CDC certification if the requisite Capital Investment Threshold is not satisfied or if the CDC violates the provisions of A.R.S. § 41-1519(L) which prohibit a CDC from generating electricity for resale purposes or providing or selling electricity outside the CDC. If a CDC certification is revoked, the Owner or Operator may be liable for repayment of all or part of the Tax Relief it received, including penalties and interest. If Revenue revokes a CDC certification, all certifications pertaining to Qualified Co-location Tenants at the CDC are similarly revoked.

### **C. Definitions**

For purposes of the Program and Applications for CDC Certification, the following terms are either defined by Commerce or defined in A.R.S. § 41-1519. If a term is not defined herein, the most commonly accepted meaning of the term will apply.

1. "Applicant" means the Owner or Operator of a CDC.

2. "Application" means a Substantially Complete Commerce form "Application for CDC Certification" and all required supplemental documents to apply for certification under the Program.
3. "Capital Investment" means the purchase price as well as any non-refundable lease payments incurred with respect to land, buildings (including tenant improvements), Modular Data Center and CDC Equipment. Capital Investment includes cumulative expenditures of an Owner, Operator and any Qualified Co-location Tenant, as may be applicable.
4. "Capital Investment Threshold" means as defined in Section A, subsection 2 herein.
5. "Computer Data Center" means all or part of a Facility that may be composed of multiple businesses or owners, that is or will be predominantly used to house working servers and that may have uninterruptible energy supply or generator backup power, or both, cooling systems, towers and other temperature control infrastructure.
6. "CDC Equipment" means equipment that is used to outfit, operate or benefit a CDC and component parts, installations, refreshments, replacements and upgrades to this equipment, whether any of the property is affixed to or incorporated into real property, including:
  - a) All equipment necessary for the transformation, generation, distribution or management of electricity that is required to operate computer server equipment, including generators, uninterruptible energy, supplies, conduit, gaseous fuel piping, cabling, duct banks, switches, switchboards, batteries and testing equipment.
  - b) All equipment necessary to cool and maintain a controlled environment for the operation of the computer server and other components of the computer data center, including mechanical equipment, refrigerant piping, gaseous fuel piping, adiabatic and free cooling systems, cooling towers, water softeners, air handling units, indoor direct exchange units, fans, ducting and filters.
  - c) All water conservation systems, including facilities or mechanisms that are designed to collect, conserve and reuse water.
  - d) All enabling software, computer server equipment, chassis, networking equipment, switches, racks, cabling, trays and conduit.
  - e) All monitoring equipment and security systems.
  - f) Modular Data Centers and preassembled components of any item described in this paragraph, including components used in the manufacturing of Modular Data Centers.
  - g) Other tangible personal property that is essential to the operations of a CDC.
7. "Existing CDC" means a CDC that is certified under A.R.S. § 41-1519(E)(2).

8. "Facility" means one or more parcels of land in Arizona and any structures and personal property contained on the land.
9. "Letter of Certification" means the written correspondence from Commerce indicating that the Owner, Operator or Qualified Co-location Tenant is qualified to begin receiving Tax Relief under the Program.
10. "Modular Data Center" means a portable system of information technology, climate control, energy supply and energy distribution machinery, equipment and related tangible personal property contained in an intermodal freight container or similar structure.
11. "Operator" means a person or entity that owns or operates a CDC. Operator may include a licensed property management company, property lessor, or other person or entity responsible for the control, oversight and maintenance of a Facility. Operator may include single entities or affiliated entities. Unless Commerce otherwise expressly agrees, Operator does not include a Qualified Co-location Tenant who contracts to use or occupy space within a CDC.
12. "Owner" means the person or entity of record holding title to the real property or structures on the land. Owner may also include a person or entity that has express rights to the real property through contract or otherwise. Owner may include single entities or affiliated entities.
13. "Qualification Period" means:
  - a) With respect to the Owner or Operator of a CDC, a period of time beginning on the date of certification of the CDC and expiring at the end of the tenth full calendar year following the calendar year in which the Owner or Operator filed the Application with Commerce, except, if a CDC is a Sustainable Redevelopment Project, Qualification Period means a period of time beginning on the date of certification of the CDC and expiring at the end of the 20<sup>th</sup> full calendar year following the calendar year in which the Owner or Operator filed the Application with Commerce.
  - b) With respect to the Qualified Co-location Tenant of an Owner or Operator of a CDC certified under A.R.S. § 41-1519, a period of time beginning on the date that the Qualified Co-location Tenant enters into an agreement concerning the use or occupancy of the CDC and expiring at the earlier of the expiration of the term of this agreement or the tenth full calendar year following the calendar year in which the Qualified Co-location Tenant enters into this agreement, except, if a CDC is a Sustainable Redevelopment Project, Qualification Period means a period of time beginning on the date that the Qualified Co-location Tenant enters into an agreement concerning the use or occupancy of the CDC and expiring at the earlier of the expiration of the term of this agreement or the 20<sup>th</sup> full calendar year following the calendar year in which the tenant enters into this agreement.



14. "Qualified Co-location Tenant" means an entity that contracts with the Owner or Operator of a CDC that is certified pursuant to A.R.S. § 41-1519 to use or occupy all or part of the CDC for at least five hundred kilowatts per month for a period of two or more years.
15. "Substantially Complete" means, in respect to an Application, that all matters are fully addressed by the Application and that any and all supplemental documents required by Commerce are attached or can be supplied within 14 calendar days after receipt of notification by Commerce of any deficiencies (or within an additional 14 calendar day period if requested by the Applicant and granted by the Program's manager).
16. "Sustainable Redevelopment Project" means a CDC that satisfies the requirements in A.R.S. § 41-1519(E) and that occupies or will occupy the structural improvements at an existing Facility that either:
  - a) Was at least fifty percent vacant for six of the twelve months before the acquisition by purchase or lease of or with respect to the Facility.
  - b) Attains certification under the Energy Star or Green Globes standard, the leadership in energy and environmental design green building rating standard developed by the United States Green Building Council or an equivalent green building standard and was not previously certified under these standards.
17. "Tax Relief" means the deduction of the gross proceeds of sale or gross income from the sale of qualified equipment as prescribed by A.R.S. §§ 42-5061, 42-5159 or 42-6004 that is installed in a CDC.