

# Enrolled Senate Bill 611

Sponsored by COMMITTEE ON FINANCE AND REVENUE

CHAPTER .....

AN ACT

Relating to central assessment; creating new provisions; amending ORS 307.126, 308.505 and 308.516; and prescribing an effective date.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 307.126 and sections 2, 3, 5, 6, 8 and 10 of this 2015 Act are added to and made a part of ORS 308.505 to 308.665.

**SECTION 2.** (1) The property of a company described in ORS 308.515 (1) may be granted an exemption under section 3 of this 2015 Act or section 5 of this 2015 Act, but not under both sections 3 and 5 of this 2015 Act.

(2) For any company whose property is eligible for an exemption under both sections 3 and 5 of this 2015 Act, the Department of Revenue shall appraise the value of the property under sections 3 and 5 of this 2015 Act for each property tax year and use the provisions of the section that result in the lowest amount of taxable value.

**SECTION 3.** (1) Subject to section 2 of this 2015 Act, the property of a company described in ORS 308.515 (1) shall be granted an exemption in the amount of the positive value, if any, obtained by subtracting from the real market value of the company's real property and tangible and intangible personal property included in the unit subject to central assessment, reduced by the amount of any exemption elected under ORS 307.126, an amount equal to the historical or original cost of the company's real property and tangible personal property included in the unit subject to central assessment, without reduction for any exemption elected under ORS 307.126, multiplied by 130 percent.

(2) If the amount determined under subsection (1) of this section is not positive, subject to section 2 of this 2015 Act, the real market value of the company's real property and tangible and intangible personal property included in the unit subject to central assessment, reduced by the amount of any exemption elected under ORS 307.126, shall be the real market value of the company's property for the property tax year.

(3) Notwithstanding subsection (1) of this section, an exemption granted under this section may not exceed an amount equal to 95 percent of the real market value of the company's real property and tangible and intangible personal property included in the unit subject to central assessment.

(4)(a) If the property of a company is granted an exemption under this section for a property tax year, the property is not eligible for any other exemption from ad valorem property taxation for the property tax year.

(b) Notwithstanding paragraph (a) of this subsection:

(A) An exemption granted under ORS 307.126 to property that is granted an exemption under this section shall be allowed in the manner provided under this section and ORS 307.126.

(B) An exemption granted under this section for a property tax year has no effect on the benefits that the property of the company or the company may be granted under ORS chapter 285C or ORS 307.123 for the property tax year.

**SECTION 4.** ORS 307.126 is amended to read:

307.126. (1) [*Licenses granted by the Federal Communications Commission are exempt from ad valorem property taxation, and the value of the licenses may not be reflected in the value of real or tangible personal property.*] **A company described in ORS 308.515 (1) that owns, leases or uses property listed in subsection (2) of this section may elect property described in one paragraph of subsection (2) of this section to be exempt from ad valorem property taxation.**

(2) The property referred to in subsection (1) of this section consists of:

(a) Licenses granted by the Federal Communications Commission.

(b) If the company is in the business of communication, franchises.

(c) Satellites that are used by the company to provide communication services directly to retail customers or that are being constructed for such use and Federal Communications Commission licenses related to the use of the satellites to provide the communication services.

(3) The value of the property listed in subsection (2) of this section shall be equal to the cost of the property carried in the accounting records of the owner of the property, less the accrued depreciation reserve for the property.

**SECTION 5.** (1) Subject to section 2 of this 2015 Act, the property of a company described in ORS 308.515 (1) shall be granted an exemption under subsection (5) of this section if the company builds, maintains and operates a qualified project in Oregon.

(2) A project is qualified under this section if:

(a) The project requires capital investment in newly constructed or installed real or tangible personal property constituting infrastructure that enables the company to offer communication services, including a capacity of at least one gigabit per second symmetrical service, to a majority of the residential customers of the company's broadband services; and

(b) With respect to communication services offered by the company using the infrastructure, the company does not deny access to the communication services to any group of residential customers because of the income level of the residential customers in the local service area in which the residential customers reside.

(3)(a) A company seeking the exemption granted under this section must submit an application to the Public Utility Commission, with a copy to the Department of Revenue, on or before January 15 preceding the first property tax year for which the exemption is sought.

(b) The application must include:

(A) A certification that the project meets the requirements of subsection (2) of this section; and

(B) An application fee of \$50,000.

(c) The application fee shall be distributed evenly to the commission and the department to reimburse the commission for the costs of reviewing the application and the department for the costs of appraising the property of the company submitting the application.

(4)(a) On or before March 1 of the year in which the application is submitted under subsection (3) of this section, the commission shall determine whether the project is a qualified project.

(b) During the period in which the commission is making a determination under this subsection:

(A) The commission may discuss the information included in the application with the company and the department;

(B) The commission shall consult with any city with which the company has entered into a franchise fee agreement to provide services to which the application relates;

(C) The company may amend the application; and

(D) Upon request of the company, the commission may grant an extension of not more than two weeks for a determination under this subsection.

(c) If the commission determines that the project is not a qualified project, the application may not be approved. The commission shall notify the company of the negative determination and state the reasons.

(d) If the commission determines that the project is a qualified project:

(A) The application shall be approved.

(B) The commission shall notify the company, the department and the assessor of each county in which the project is located of the approval.

(C) Subject to section 2 of this 2015 Act, the property of the company shall be granted the exemption under subsection (5) of this section beginning with the first property tax year that begins after the date of the determination.

(5)(a) The property of a company described in subsection (1) of this section shall be granted an exemption for a property tax year in an amount equal to the positive value, if any, obtained by subtracting from the real market value of the company's real property and tangible and intangible personal property, including property that would otherwise be assessed under section 8 of this 2015 Act, that is allocated to Oregon and included in the unit subject to central assessment, reduced by the portion of the value of any exemption elected under ORS 307.126 that is allocated to Oregon, an amount equal to the greater of \$250 million or the real market value of the company's real and tangible personal property located in Oregon as of the assessment date, without reduction for any exemption elected under ORS 307.126.

(b) The exemption shall be granted for the lesser of 20 consecutive property tax years or the period during which an owner maintains and operates the qualified project.

(6) If the amount determined under subsection (5)(a) of this section is not positive, subject to section 2 of this 2015 Act, the real market value of the company's real property and tangible and intangible personal property, excluding property that is assessed under section 8 of this 2015 Act, allocated to Oregon and included in the unit subject to central assessment, reduced by the portion of the value of any exemption elected under ORS 307.126 that is allocated to Oregon, shall be the real market value of the company's property allocated to Oregon for the property tax year.

(7)(a) If the property of a company is granted an exemption under this section for a property tax year, the property is not eligible for any other exemption from ad valorem property taxation for the property tax year.

(b) Notwithstanding paragraph (a) of this subsection:

(A) An exemption granted under ORS 307.126 to property that is granted an exemption under this section shall be allowed in the manner provided under this section and ORS 307.126.

(B) An exemption granted under this section for a property tax year has no effect on the benefits that the property of the company or the company may be granted under ORS chapter 285C or ORS 307.123 for the property tax year.

**SECTION 6.** (1)(a) Notwithstanding any other provision of law relating to the confidentiality of public records, on or before December 15 of each year, each assessor of a county in which property granted an exemption under section 5 of this 2015 Act, in accordance with section 2 of this 2015 Act, is located shall submit to the Department of Revenue a report stating the amount of the exemption granted to the property of each company, the amount of property taxes imposed on the property and the amount of property taxes that were not imposed on the property because of the exemption for the current property tax year and estimates of these amounts for the following property tax year.

(b) No later than January 1 of each year, the department shall submit a report compiling the information received from counties under paragraph (a) of this subsection to the Public Utility Commission.

(2) No later than February 1 of each year, the commission shall submit a report in the manner provided by ORS 192.245 to the interim committees of the Legislative Assembly related to revenue that states or describes:

(a) The name and business of each company whose property is granted an exemption under section 5 of this 2015 Act.

(b) For each company described in paragraph (a) of this subsection:

(A) The capital investment made by the company in Oregon in newly constructed or installed real or tangible personal property constituting communication infrastructure.

(B) Whether the company has met the requirements for service capacity and offering service to residential customers.

(C) Who is served by the communication infrastructure and how they are served.

(D) The compiled information received from the department pursuant to subsection (1) of this section.

(c) Any other information the commission considers necessary for a thorough analysis of the exemption granted under section 5 of this 2015 Act.

**SECTION 7.** ORS 308.516 is amended to read:

308.516. (1) A company is not a company described in ORS 308.515 (1) to the extent that the company furnishes undiluted liquefied or industrial gas in bottles, tanks or similar containers.

(2) A company is not a company described in ORS 308.515 (1) if:

(a) The company generates electricity primarily for the company's own use and makes no more than incidental sales of the company's surplus electricity to other persons; or

(b)(A) The company's generating facility is primarily fueled by wood waste or other biomass fuel;

(B) The generating facility has a maximum capacity of 20 megawatts; and

(C) The company, if selling the generated electricity, does so only directly to an electric utility, as defined in ORS 758.505, for the electric utility's distribution to utility customers.

(3)(a) A company that **is in the business of communication and** is the owner or lessee of a data center is not a company described in ORS 308.515 (1) if:.]

*[(a) The company has entered into a written tax abatement agreement, or is entitled by assignment or succession to the benefits of a tax abatement agreement entered into, with the sponsors of an enterprise zone with respect to a data center, pursuant to ORS 285C.050 to 285C.250 or 285C.400 to 285C.420; and]*

*[(b)(A) the original cost of construction and installation of all real and tangible personal property owned or leased by the company in Oregon other than data centers does not equal more than five] **the historical or original cost of all real and tangible personal property, other than data centers, that is owned or leased by the company in Oregon, is in service and is used by the company in the business of communication, is less than or equal to 10 percent of the historical or original cost of the real and tangible personal property of all data centers owned, leased or used by the company in Oregon and all additions to the data center property[; and].***

**(b) For purposes of this subsection, property other than data centers used in the business of communication does not include property to the extent the property constitutes:**

**(A) An office;**

**(B) A warehouse;**

**(C) A manufacturing plant;**

**(D) A retail outlet;**

**(E) Property used in connection with a data center to generate electricity; or**

**(F) Electricity generated by property described in subparagraph (E) of this paragraph.**

*[(B) The property in Oregon other than data centers described in subparagraph (A) of this paragraph consists of real or tangible personal property used in the operation of an office or a warehouse or in connection with the construction, installation or operation of data center property.]*

*[(4)(a) Property of a company described in subsection (3) of this section may not be assessed under ORS 308.505 to 308.665 during the term of an exemption granted pursuant to an agreement described in subsection (3)(a) of this section or during the term of any statutorily authorized extensions of the exemption, waivers or periods of in lieu payments.]*

*[(b) For purposes of the notations required under ORS 285C.175 (7) and 285C.409 (3), the county assessor shall record the real market value, the assessed value and the amount of potential additional taxes as determined without regard to ORS 308.505 to 308.665.]*

*[(5) If a company described in subsection (3) of this section owns or leases a data center in more than one county in this state, each data center must satisfy all applicable requirements under subsection (3) of this section.]*

*[(6)(a) As used in this section:]*

*[(A) "Data center" means an online service data center or an independent data center.]*

*[(B) "Independent data center" means real and personal property consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, used primarily to provide, as a service to persons other than the company operating the independent data center, data and transaction processing services, outsource information technology services and computer equipment colocation services.]*

*[(C) "Online service data center" means real and personal property consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, used primarily to provide, to a single user, including the user's affiliates, customers, lessees, vendors and other persons authorized by the user, data and transaction processing services.]*

*[(b) For purposes of this subsection, the primary use of property is based on the relative proportion of the original cost of property used for all purposes.]*

**(4) For purposes of ORS 308.515 (1), a company is not a company in the business of communication solely because the company manufactures or holds out for sale property used by any person in communication.**

**SECTION 8. (1) The following real and tangible personal property used or held for future use by a company described in subsection (2) of this section shall be locally assessed:**

**(a) Property constituting a data center or used in connection with the operation of data center property;**

**(b) Property used on the data center property to generate electricity; and**

**(c) Electricity generated by property described in paragraph (b) of this subsection.**

**(2) Subsection (1) of this section applies to a company that is:**

**(a) Not a company described in ORS 308.515 (1); or**

**(b) A company described in ORS 308.515 (1) and the historical or original cost of the real and tangible personal property of all data centers owned, leased or used by the company in Oregon and all additions to the data center property, excluding property described in subsection (1)(b) and (c) of this section, is equal to or greater than \$200 million.**

**(3)(a) For purposes of ORS 308.505 to 308.665, property described in subsection (1) of this section, and intangible personal property that is related to the property, may not be included in any unit subject to central assessment.**

**(b) Notwithstanding paragraph (a) of this subsection, property that is used or held for future use by a company whose property is granted an exemption under section 5 of this 2015 Act and that would otherwise be assessed under this section shall be assessed under section 5 of this 2015 Act.**

**SECTION 9. ORS 308.505 is amended to read:**

**308.505. As used in ORS 308.505 to 308.665:**

**(1) "Car" or "railcar" means a vehicle adapted to the rails of a railroad.**

(2) “Centrally assessed” means the assessment of property by the Department of Revenue under ORS 308.505 to 308.665.

(3) “Communication” includes telephone communication and data transmission services by whatever means provided.

(4) **“Data center” means an online service data center or an independent data center.**

(5) **“Data transmission services” does not include providing electronic mail accounts or search engine services solely by means of contractual agreement with another company that owns the transmission property if providing such accounts or services are the only data transmission services provided by the company in Oregon.**

(6) **“Historical or original cost” means all costs incurred by a company in placing property in service for the property’s intended use by the company, including, but not limited to, purchase price, freight, engineering fees, legal fees, materials, labor, overhead, taxes, interest, entrepreneurial profit and other fees, expenses and charges related to construction or installation.**

(7) **“Independent data center” means real and personal property consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, used primarily to provide, as a service to persons other than the company operating the independent data center, data and transaction processing services, outsource information technology services and computer equipment colocation services. For purposes of this subsection, the primary use of property is based on the relative proportion of the original cost of property used for all purposes.**

[(4)] (8) “Inland water” means all water or waters within the State of Oregon, all interstate rivers touching Oregon and all tidewaters extending to the ocean bars.

[(5)] (9) “Interstate” means transit between the State of Oregon and:

(a) Another state;

(b) A district, territory or possession of the United States; or

(c) A foreign country.

[(6)] (10) “Large private railcar company” means a private railcar company with personal property with a real market value for the tax year that exceeds \$1 million.

[(7)] (11) “Locally assessed” means the assessment of property for property tax purposes by the county assessor that is not conducted under ORS 308.505 to 308.665.

(12) **“Online service data center” means real and personal property consisting of buildings or structures specifically designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including, without limitation, power and cooling equipment, used primarily to provide, to a single user, including the user’s affiliates, customers, lessees, vendors and other persons authorized by the user, data and transaction processing services. For purposes of this subsection, the primary use of property is based on the relative proportion of the original cost of property used for all purposes.**

[(8)] (13) “Person,” “company,” “corporation” or “association” means any person, group of persons, whether organized or unorganized, firm, joint stock company, association, cooperative or mutual organization, people’s utility district, joint operating agency as defined in ORS 262.005, syndicate, entity formed to partner or combine public and private interests, partnership or corporation engaged in performing or maintaining any business or service or in selling any commodity as set forth in ORS 308.515, whether or not the activity is pursuant to any franchise and whether or not the person or other entity or combination of entities possesses characteristics of limited or unlimited liability.

[(9)] (14) “Property”:

(a) Means all property of any kind, whether real, personal, tangible or intangible, that is used or held by a company as owner, occupant, lessee or otherwise, for the performance or maintenance of a business or service or for the sale of a commodity, as described in ORS 308.515;

(b) Includes, but is not limited to, the lands and buildings, rights of way, roadbed, water powers, vehicles, cars, rolling stock, tracks, office furniture, telephone and transmission lines, poles, wires, conduits, switchboards, machinery, appliances, appurtenances, docks, watercraft irrespective of the place of registry or enrollment, merchandise, inventories, tools, equipment, machinery, franchises and special franchises, work in progress and all other goods or chattels; and

(c) Does not include items of intangible property that represent:

(A) Claims on other property, including money at interest, bonds, notes, claims, demands or any other evidence of indebtedness, secured or unsecured; or

(B) Any shares of stock in corporations, joint stock companies or associations.

[(10)] (15) "Property having situs in this state" means all property, real and personal, of a company, owned, leased, used, operated or occupied by it and situated wholly within this state, and, as determined under ORS 308.550 and 308.640, the proportion of the movable, transitory or migratory personal property owned, leased, used, operated or occupied by a company, including but not limited to watercraft, aircraft, rolling stock, vehicles and construction equipment, as is used partly within and partly outside of this state.

[(11)] (16) "Small private railcar company" means a private railcar company with personal property with a real market value for the tax year that does not exceed \$1 million.

[(12)] (17) "Transportation" means carrying, conveying or moving passengers or property from one place to another.

[(13)] (18) "Vehicle" means any wheeled or tracked device used in transportation under, on or in connection with the physical surface of the earth.

**SECTION 10. The Legislative Assembly declares that the intention of the amendments to ORS 308.516 by section 7 of this 2015 Act is to exclude from central assessment the property of qualifying companies that own or operate data centers.**

**SECTION 11. (1) Sections 8 and 10 of this 2015 Act and the amendments to ORS 308.505 and 308.516 by sections 7 and 9 of this 2015 Act apply to property tax years beginning on or after July 1, 2015.**

**(2) Sections 2, 3, 5 and 6 of this 2015 Act and the amendments to ORS 307.126 by section 4 of this 2015 Act apply to property tax years beginning on or after July 1, 2016.**

**SECTION 12. This 2015 Act takes effect on the 91st day after the date on which the 2015 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

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**Passed by Senate March 2, 2015**

**Repassed by Senate March 24, 2015**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House March 20, 2015**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2015

**Approved:**

.....M.,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State