

November 13, 2025

Michigan Economic Development Corporation
Attn: Michigan Strategic Fund Board
300 N. Washington Sq.,
Lansing, MI 48913

Via Mail

RE: Enterprise Data Center Sales and Use Tax Exemption Guidelines

Dear Members of the Board,

This letter concerns the Michigan Strategic Fund's (MSF) recent guidelines regarding the expansion of tax exemptions to Michigan-based data centers. As described below, MSF's guidelines are not authorized by law and are contrary to the text of the relevant statutes. On behalf of the Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan, I respectfully request that MSF revise its guidelines to comply with Michigan law.

In January 2025, the State of Michigan amended its Use Tax Act, MCL 205.94cc, and General Sales Tax Act, MCL 205.54ee, (collectively, "Tax Acts") to exempt data center equipment from sales and use taxes if stored, used, or consumed in an enterprise data center. To qualify for an exemption, an applicant must demonstrate that its facility meets the criteria for classification as an enterprise data center—or that its facility *will* meet the criteria within six years of its application. MCL 205.54ee(6)(a); MCL 205.94cc(6)(a). Among other things, the Tax Acts require applicants to meet green building standards and clean energy requirements. MCL 205.54ee(10)(e); MCL 205.94cc(10)(e). On August 26, 2025, the MSF published guidance on the Tax Acts' eligibility requirements in a document titled, "Enterprise Data Center Sales and Use Tax Exemption Guidelines" (Guidelines). These Guidelines mischaracterize the Tax Acts' clean energy requirements and purport to authorize enterprise data centers to claim exemptions in circumstances not authorized by the governing statutes.

To qualify for the tax exemptions, MCL 205.54ee and MCL 205.94cc both require enterprise data centers to procure at least 90% of the facility's forecasted annual electricity usage from clean energy sources. The Tax Acts state that a data center can meet the clean energy requirement by (A) self-supply through on-site generation of renewable energy, (B) long-term contract with the electric utility, cooperative electric utility, or municipal utility serving the geographic area where the facility is located, or (C) participation in a voluntary green pricing program. MSF's Guidelines interpret this requirement as follows:

A Qualified Entity or its Affiliate complies with this requirement if it executes a long-term contract with a utility provider that (1) is subject to and is operating under the regulatory framework set forth in Section 5 of the Clean and Renewable Energy and Energy Waste Reduction Act, 2008



PA 295, MCL 460.1051 (the “Clean Energy Act”) and (2) the utility provider is actively pursuing compliance with the requirements of Section 51 of the Clean Energy Act, including through authorized extensions, variances, or alternative mechanisms permitted by the Michigan Public Service Commission.

Michigan Strategic Fund, “Enterprise Data Center Sales and Use Tax Exemption Guidelines” (August 26, 2025), p 4.

MSF’s Guidelines also state:

If the Contracted Utility Provider is determined to be non-compliant with the requirements under Section 51 of the Clean Energy Act, a Qualified Entity or its Affiliate that procured the long-term contract with the Contracted Utility Provider in good faith and certified its intent to procure clean energy as required under these Guidelines is not subject to revocation or repayment of the exemptions claimed under the Certificate solely on this basis.

Id.

The quoted passages of the Guidelines do not appear in the text of MCL 205.54ee or MCL 205.94cc and are contrary to the Tax Acts’ plain meaning and the Legislature’s intent. To satisfy the clean energy requirement, applicants must affirm that their “facility has procured or will procure [within six years] clean energy as described in section 51 of the clean and renewable energy and energy waste reduction act” (Clean and Renewable Energy Act), MCL 460.1051. MCL 205.54ee(6)(c)(iii); MCL 205.94cc(6)(c)(iii). Further, the Tax Acts require MSF to deny or revoke an applicant’s tax-exempt status for non-compliance with the clean energy requirement. MCL 205.54ee(6)(d); MCL 205.94cc(6)(d).

However, the Guidelines purport to allow an enterprise data center to claim tax exemptions even in circumstances where it has failed to procure the amount of clean energy required by statute. According to the Guidelines, an enterprise data center complies with the clean energy requirement merely by contracting with a utility provider that (1) is “subject to the regulatory framework set forth in Section 51” of the Clean and Renewable Energy Act and (2) is “actively pursuing compliance with [its] requirements...including through authorized extensions, variances, or alternative mechanisms permitted by the [MPSC].”

But it cannot be said that a data center procures clean energy merely by contracting with an electric utility that is subject to the Clean and Renewable Energy Act. Under the Clean and Renewable Energy Act, utility providers are not required to meet any clean energy standard until 2035, and between 2035 and 2039, electric utilities will be required to achieve 80-percent clean energy portfolios. MCL 460.1051(1). The Tax Acts require data centers to meet a higher, 90-percent clean energy standard within six years of applying for an exemption, which could be as soon as 2031 for some enterprise data centers. From now until 2040 (and longer if extensions are granted), a utility provider can comply with the Clean and Renewable Energy



Act without 90 percent of its sales consisting of clean or renewable energy as defined by that statute. Therefore, a provider's compliance with the Clean and Renewable Energy Act is not sufficient to meet the Tax Acts' requirement to procure 90-percent clean energy within six years.

Basic statutory interpretation confirms that the Tax Acts' 90-percent clean energy requirement is *in addition to* requirements imposed on utility providers through the Clean and Renewable Energy Act. Statutes should generally be interpreted to give effect to every word and every provision, and yet, MSF's Guidelines currently interpret the Tax Acts in a manner that renders the 90-percent clean energy standard meaningless. If the Legislature meant for applicants to satisfy the clean energy requirement simply by contracting with a utility provider that is subject to the Clean and Renewable Energy Act, then that is all the Tax Acts needed to state. Instead, the Tax Acts required enterprise data centers to procure 90-percent clean energy to be eligible for exemptions and then offered contracting with a provider as one of the possible options to do so. While MSF is correct that an enterprise data center may procure clean energy by contracting with a utility provider, having such a contract does not obviate the requirement to procure clean energy equivalent to 90% of the enterprise data center's forecasted electricity usage. Unless an enterprise data center has actually met the 90-percent clean energy requirement or can show that it will meet that requirement within 6 years,¹ the Tax Acts do not permit it to claim exemptions. See MCL 205.54ee(6)(d); MCL 205.94cc(6)(d).

By allowing enterprise data centers to claim tax exemptions in violation of the Tax Acts, MSF is undermining the Legislature's clear intent to mitigate the environmental harms of data centers. Though, as initially introduced, the proposed bills – 2024 S.B. 237 and 2024 H.B. 4906 – contained no real environmental provisions, they were amended to address serious concerns that were raised regarding the negative environmental impacts of data centers. During legislative sessions, representatives heard testimony about the large amounts of energy and water consumed by data centers – including testimony that “data centers consume about 3% of the world's total electric supply and produce 2% of the world's greenhouse gas emissions.” Senate Legislative Analysis, SB 237, HB 4906 (July 24, 2024). The bills were specifically amended to add environmental protections, including requirements to meet clean energy and green building standards. See 2024 SB 237; 2024 HB 4906. The bills were also amended to “encourage” persons claiming exemptions to “take direct steps...to mitigate negative environmental impacts resulting from expanded use of data centers” by, for example, “procuring or contracting for power from renewable sources.” MCL 205.54ee(8); MCL 205.94cc(8). The Tax Acts' final versions reflect the Legislature's intent to mitigate the environmental impacts of data centers through both voluntary and mandatory provisions. The clean energy requirement is one of the mandatory provisions that must be satisfied before an enterprise data center can qualify for tax exempt status.

¹ Applicant data centers are not without alternatives if utility providers cannot provide sufficient clean energy to meet the Tax Acts' clean energy requirements. See MCL 205.54ee(10)(ix)(A), (C); MCL 205.94cc(10)(ix)(A), (C).

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MSF's Guidelines do not adequately enforce the clean energy requirement and allow some enterprise data centers to claim tax exemptions for which they do not qualify under the Tax Acts. The Guidelines must therefore be revised to comply with the Tax Acts' plain meaning and the legislature's intent to impose clean energy requirements on enterprise data centers.

Sincerely,

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