

LEGAL UPDATES

PUBLISHED: JANUARY 15, 2026

Hydrogen Used to Power Data Centers Is Taxable in Texas

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Investment in data centers continues to increase significantly as the country builds out infrastructure to accommodate the digital economy and growth of artificial intelligence. Many states, including Texas, have now implemented various tax incentives to encourage investment in the state.

In 2013, Texas expanded its sales and use tax exemption under Tex. Tax Code Ann. § 151.317(a) to cover gas and electricity sold for direct use by state-certified qualifying data centers. [L. 2013, c. 1274, §2] In 2015, the exemption was further extended to include large data centers. [L. 2015, c. 412, §2]

In November 2025, the Texas Comptroller of Public Accounts issued a private letter ruling that addressed whether hydrogen counts as a “gas” eligible for the exemption. The taxpayer in the ruling developed and constructed modular data centers powered by hydrogen produced from natural gas. Under the rationale that the common, ordinary meaning of “gas” includes “hydrogen,” the taxpayer asserted the sales and use tax exemption applied.

The Comptroller ruled against the taxpayer, determining that hydrogen does not qualify as a “gas” and is therefore not exempt from sales and use tax. The analysis pointed out that, historically, the term “gas” has always referred solely to natural gas for this exemption, including in the current administrative rule. The Comptroller’s ruling noted that the exemption statute specifically refers to natural gas when explaining how to calculate predominant use, and that this provision was added in 1999 by HB 3211 as a clarification of existing law. It also noted that gas is taxable as a sale of tangible personal property unless an exemption applies, and that gas and electricity have been taxed as a utility service since 1961.

What this means to you

A Texas taxpayer that buys hydrogen or hydrogen fuel cells to operate a data center is required to pay tax on those purchases. Investors in data centers in Texas should evaluate the cost difference between using taxable hydrogen and tax-exempt natural gas or electricity as power sources.

Contact Us

For further details or additional information, please contact Smitha Chintamaneni, Bill Schenkelberg, or a member of the Husch Blackwell State & Local Taxation team.