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ALERT

How a data center dodged pa millions of dollars in comput

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Rick Updegrove was startled to learn in the fall that Niagara County's sales tax revenues hadn't changed significantly in the last four years.

The county manager knew that a Maryland company had spent tens of millions of dollars since 2022 to build and equip its Lake Mariner data center in the Town of Somerset.

It had purchased computers, servers and a host of other equipment to power, connect and cool the system, enabling it to engage in energy-intensive bitcoin mining and now artificial intelligence.

But it hadn't paid a penny of sales tax, Updegrove realized.

So, he contacted the state Department of Taxation and Finance to learn why. And he reached out to the company, TeraWulf Inc., which eventually replied that it has "treated certain purchases at Lake Mariner as exempt from sales tax," according to an email from the company to The Buffalo News that confirmed the claim.

An aerial view of the former AES Corp. coal-fired energy plant, now home to the Lake Mariner cryptocurrency mining and artificial intelligence data center campus.

Google

TeraWulf said its purchases aren't subject to sales tax because of a law enacted during the administration of Republican Gov. George Pataki. That law, enacted during the fledgling days of the internet, was targeted to support email and web-hosting operations.

But TeraWulf said the law applied to its operations as well, allowing it to avoid paying sales tax on tens of millions of dollars of equipment it purchased for the Niagara County data center.

And the savings add up quickly. For every $10 million in equipment purchased, the company normally would be expected to pay $800,000 in sales tax, split between the state and local municipalities.

TeraWulf hasn't said how much it spent to outfit the Somerset complex, but it is not unusual for data centers to spend hundreds of millions of dollars on computer equipment.

County officials had no idea this was happening. And that has them hopping mad.

“The sales tax revenues would have a significant impact on our budget,” Updegrove said. “I think it would be hard to overstate the importance of that revenue stream.”

Wulf Compute looks to expand data center in Somerset

The Lake Mariner project has major implications across the state, at a time when proposals to build data centers are spreading throughout the state. If the equipment purchases at those facilities were exempt from sales tax, it would deprive state and local governments of tens of millions in sales tax revenue in the future.

The state’s annual **Tax Expenditure Report**, which lists foregone tax revenues from a host of categories, said the Pataki-era internet data center exemption will cost the state $12 million in sales taxes this year.

That is double the level from 2020, but small in comparison to some of the enormous tax breaks that projects have received from IDAs, such as $77 million for an average-sized data center for JPMorgan Chase & Co., said John Kaehny, executive director of Reinvent Albany.

"One of the inherent problems with any of these wasteful tax breaks is that they are expensive for the state to oversee, ripe for abuse and rarely clawed back if misused," Kaehny said. "It is no surprise to learn bad actors are using this irrational and archaic subsidy to rip off N.Y. taxpayers."

TeraWulf says the exemption is perfectly legal, relying on “an existing provision of New York tax law applicable to internet data center operations,” said Kerri Langlais, the company’s chief strategy officer.

Complete coverage: North Tonawanda crypto company wants to transform into data center

But county officials argue that that benefit from the Pataki administration was specifically designed to support email and web hosting operations, not a data center such as Lake Mariner.

They say TeraWulf is misusing the tax provision. And they are preparing to sue for what they believe are tens of millions of dollars in unpaid taxes.

Meanwhile, state officials aren’t saying whether Lake Mariner is unique or if other companies are doing the same elsewhere in the state.

It is not just an academic question, either. Sales taxes in New York are usually split between the state, which charges 4%, and the county, whose percentage varies. Niagara County charges another 4%, for a total of 8%.

Usually, tax breaks to business operations within the county are granted – and publicly disclosed – by the Niagara County Industrial Development Agency, another local IDA or Empire State Development Corp. But that is not the case with Lake Mariner. TeraWulf did not even apply to the NCIDA.

Langlais confirmed that TeraWulf has not received any other “discretionary tax incentive, subsidy, abatement or negotiated economic development benefit.”

That is in stark contrast to Genesee County, where the county Economic Development Center is considering $1.4 billion in tax breaks for Stream Data Centers’ $19.5 billion project in the Science, Technology and Advanced Manufacturing Park, or STAMP.

An aerial view of the Tonawanda Coke remediation site, where the Riverview Innovation & Technology Campus has paused its plans to construct a 495,000-square-foot data center to power artificial intelligence.

Joed Viera, News file photo

What’s a data center?

Updegrove said he was told by company officials that the data center exemption is “common knowledge in the industry and is one of the factors that makes New York an attractive site for data center location and siting.”

But what makes a data center eligible for this tax benefit?

TeraWulf is using a provision in the tax code from 2000 that automatically exempts “certain property that you purchase for use in the data center” from sales taxes, **according to a March 2012 bulletin that explains the benefit on the website of the New York State Department of Taxation and Finance**.

However, that tax exemption is specifically for “internet data centers,” according to the **bulletin**, written well before the growth of artificial intelligence and cryptocurrency mining. In fact, the bulletin goes on to explain “who is considered an operator of an internet data center for purposes of the exemption, and which property and services are exempt from sales tax.”

Specifically, it defines “an internet data center” as one that is “specifically designed and constructed as a high security environment for the location of servers and similar equipment that hosts internet websites” and that “provides uninterrupted internet access to customers’ web pages and continuous management of internet traffic for customers’ websites.”

That would have applied to older data centers such as Yahoo’s in Lockport, for example, which opened in 2010 and still operates today, although it is now owned by Denver-based H5 Data Centers and is not solely for Yahoo anymore.

But the tax provision does not refer to the artificial intelligence, cryptocurrency mining or any other kind of high-performance computing used in the larger, modern data centers that have become the subject of intense controversy.

That is the issue for Updegrove and Niagara County.

“I would assert that the exemption at that time did not envision Lake Mariner,” the county manager said. “Yahoo is not Lake Mariner. I don’t think the operation of Lake Mariner is applicable to this.”

Stonewalled by state, company

But Updegrove also can’t get answers from the state to clarify the use of the exemption.

“I couldn’t find one single person in the Department of Taxation and Finance who knew if the exemption applied,” he said. “The Department of Taxation and Finance cannot tell us if the exemption is being claimed or how much.”

Similarly, state officials also haven’t responded to multiple inquiries from The Buffalo News.

Yet, to obtain the exemption, TeraWulf or one of its subsidiaries would have had to file a **special form with the state,** certifying that the “machinery, equipment and other tangible personal property” being purchased “will be required for and directly related to the provision of internet website services for sale by the operator of the center.”

The News filed a Freedom of Information Law request May 28 with the state Department of Taxation and Finance to obtain public records of which companies are using the benefit and how much money they have saved statewide. The state has not responded to the request.

Meanwhile, Niagara County hired Buffalo law firm Hodgson Russ to investigate TeraWulf’s tax exemption claims and to determine how much has been spent and how much might be exempt from taxes. The county then could file a lawsuit to collect any sales taxes that are owed.

Updegrove said Friday that such a lawsuit is coming shortly.

“We think we’re right,” he said.

First crypto, then AI

The flood of data center proposals not only across the state, but nationwide, have caused an uproar in many communities, not only over taxes and incentives, but also concerns about noise, power and water use and land use.

Niagara County has been one of the biggest destinations for data centers, with at least five existing and additional sites proposed, but projects are also brewing in Genesee and Chautauqua counties, among others.

State lawmakers recently passed a proposed one-year moratorium on issuing new permits for data centers, but opponents say the measure would hurt the construction industry and economic development. It is not yet clear whether Gov. Kathy Hochul will sign it.

There is also proposed legislation – the **Stop Subsidizing Data Centers Act** – that would sharply restrict or prohibit tax breaks and low-cost power allocations for data centers.

TeraWulf owns 1,800 acres in all at Somerset, including the 1,200-acre former AES Kintigh coal-fired power plant and an associated landfill. It is developing 410 acres, but only 30 acres are for the data centers, with another 275 acres for future industrial and business uses, and 104 acres reserved for open space.

Plans for the original facility were first unveiled in 2021, when TeraWulf predecessor Beowulf Energy filed plans with the town to construct four 24,000-square-foot buildings filled with computers to handle the calculations needed for bitcoin mining. Ultimately, three were built at 24,600 square feet, while the fourth was 33,750 square feet.

Then, last summer, TeraWulf filed plans to expand the site at 7725 Lake Road with an AI data center, including a 168,000-square-foot building, as well as a 72,000-square-foot dry-cooler yard. Besides computers, the project was to include purchases of new transformers, electrical switchgear, electrical bus duct and power cables to be installed, along with new chillers, a condenser and chilled water pumps, heat exchangers and fans.

The company hasn't said how much it spent on such purchases, but its original total project in 2021 was $150 million. Even if just $100 million was spent on purchases, that would be $4 million in tax revenues that Niagara County hasn't received.

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