PUBLIC CITIZEN

August 31, 2026

The Honorable Ron Wyden
Ranking Member
Senate Finance Committee
Washington, DC 20002

RE: Public Citizen's Response to Senator Ron Wyden's [Request for Information]: Proposal for the Taxation of Data Centers Senate Finance Committee Democratic Staff White Paper

Dear Ranking Member Wyden,

Thank you for the opportunity to submit a response to your proposal to tax data centers. On behalf of more than one million members and supporters of Public Citizen, we submit the following comments in response to your *Request for Information on the Senate Finance Committee's Democratic Staff White Paper: Proposal for the Taxation of Data Centers*. We applaud your leadership to hold the data center industry accountable and to protect the American people.

As the committee references, Big Tech is rapidly expanding a nationwide network of data centers to power artificial intelligence—fueling corporate profits while leaving the public to shoulder the costs.[1] Built at breakneck speed and with little to no government oversight or public input, this development is unfolding without necessary guardrails to protect the public interest. Further unchecked expansion threatens to drive more climate-warming emissions, harm local communities, and impact grid stability and the cost of living with estimates predicting data center electricity demand could double—or even triple—by 2028.[2]

Public Citizen believes this proposal provides an important first step to make Big Tech accountable and pay for the rampant development of data centers. And, we echo warnings of the inadequate existing federal oversight, regulation, or enforcement of AI and data centers to properly respond to community concerns, as well as concerns over the profitability of AI.[3] As you and the committee consider this proposal, we are confident that Congress can embrace holistic federal guardrails that respond to valid concerns about community consent, land use, energy prices, local pollution, and climate change. For further ideas, we hope you consider the policy suggestions in Public Citizen's December 2025 report.[4]

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[1] Weise, Karen, Microsoft Backs Up A.I. Spending With $27.2 Billion Quarterly Profit. New York Times (30 June 2025), https://www.nytimes.com/2025/07/30/technology/microsoft-earnings-ai-data-centers.html
[2] Shehabi, Arman et al., 2024 United States Data Center Energy Usage Report, Lawrence Berkeley Lab (Dec. 2024), https://escholarship.org/uc/item/32d6m0d1
[3] Marshall, Christa, AI boom sparks rare warning of 'significant risks' to grid, E&E News, (4 May 2026), https://www.eenews.net/articles/ai-boom-sparks-rare-warning-of-significant-risks-to-grid/ ; Leask, Hugh, Bill Gates warns 'there is no plan' for the 'upheaval' AI will cause, CNBC (26 August 2026), https://www.cnbc.com/2026/08/26/bill-gates-ai-jobs-economic-upheaval.html
[4] Noel, Deanna and Pazik, Meghan, Reining in Big Tech: Policy Solutions to Address the Data Center Buildout, Public Citizen (3 December 2025), https://www.citizen.org/article/reining-in-big-tech-policy-solutions-to-address-the-data-center-buildout/

**Response to Senator Wyden's Data Center Public Investment excise tax proposal:**

1. **Removal of existing unnecessary benefits:** Public Citizen supports the proposal to remove federal benefits for data centers, including making data centers ineligible for 100% bonus depreciation, prohibiting data center incentives through opportunity zones, and excluding the rents paid to REITs by new data centers from the tax-favorable REIT regime.

   Additionally, the committee should consider 1) calculating projected revenue increases from removing benefits of bonus depreciation with the Joint Committee on Taxation (JCT); and 2) working with the Government Accountability Office and JCT to identify other potential federal tax credits and benefits that data centers currently receive. This would allow the committee to fully consider other federal incentives that should be revoked for data centers (for example, research and development tax credits).[5]

2. **Implementation of a Data Center Public Investment excise tax:** Public Citizen supports an excise tax levied on data centers to generate long-term funding to support communities and workers. As the committee considers the current proposal, where the excise tax would function as a gross receipts tax on data center operators, Public Citizen urges committee staff to explore additional tax levies to the gross receipts tax, such as including a federal excise tax on data center energy consumption.

   Public Citizen suggests coupling an excise tax on energy use with an incentive for the owners and operators to reduce residential rates. For example, the excise tax could be adjusted year-over-year if the data center owner or operator reduces residential energy rates by at least one percent. The revenue generated from the tax could, in part, fund utility rate reductions for moderate- and low-income households, finance clean energy and energy efficiency grants for families, or fund existing or new programs (i.e., a federal utility climate adaptation and resilience fund to disperse funds to states to reduce residential utility rates).

   As the committee works to identify the "low single-digit rate," Public Citizen would welcome providing feedback, analysis, or other considerations for this portion of the excise tax proposal.

3. **Determining what is a data center:** Public Citizen supports the first iterations of defining which data centers would be eligible under this proposal, including carving out exemptions for small, local data centers unless they share data with hyperscalers. However, the committee should consider a mechanism to ensure hyperscalers do not use this definition to avoid the excise tax, such as requiring the registration of small, local data centers through the Internal Revenue Service (IRS) and/or certification or registration of owners and operators of hyperscalers that may already own small, local data centers through the IRS. The committee should also consider defining what is considered a "small" or "medium" sized data center.

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[5] Mannion, Tom and Schram, Tim, 4 Key OBBBA Provisions Data Centers Need to Know, BDO USA, (30 March 2026), https://www.bdo.com/insights/industries/technology/4-key-obbba-provisions-data-centers-need-to-know

Additionally, the committee should consider additional definitions related to energy and water use when determining the eligibility of data centers and hyperscalers for the excise tax. The definition should encompass how to address both hyperscalers (typically above 100 megawatts [MW]) and data centers that are below that threshold but would still consume large amounts of energy (20MW-100MW). The MW definition should ensure that other industrial large loads are not adversely impacted. Public Citizen defines a relevant data center as 20 MW or greater—consistent with the Federal Energy Regulatory Committee's (FERC) definition of a large load.[6] We also recommend Congress or FERC set a maximum threshold limit for data centers and hyperscalers.

As the committee moves forward with the excise tax proposal, considerations around energy use of data centers should be done in coordination with relevant congressional committees and the Energy Information Administration (EIA), which is currently in the process of gathering energy data from data centers.[7] The EIA should be required and/or encouraged to work with the IRS to ensure accurate data and reporting of energy use, should energy use considerations be included as part of the revenue for the excise tax.

4. **Addressing pre-existing data centers:** In the current excise tax proposal, which focuses on data centers that were placed in service towards the end of 2023, the committee should consider additional mechanisms to close potential loopholes that may allow data centers to use a pre-construction date to avoid the excise tax. For example, a company shouldn't be allowed to expand an existing facility to avoid the "placed in service" date.

5. **How to deal with the many business models of data center infrastructure:** The current proposal to limit the scope of the tax on the "data center operator," or the legal owner of the data center and/or the taxpayer operating the data center, is a useful start. Public Citizen would support strong guidelines for ensuring the taxpayer selling the services of the data center or operating the data center be carefully defined to ensure that Big Tech firms do not avoid the excise tax or other federal regulations. For example, the committee should consider how third party business vendors, or private equity businesses, who would qualify as the "owner" but not the sole "operator" of the data center should be taxed. While Big Tech should shoulder most of the tax liability of owning and operating data centers, private equity investors[8] and third party business vendors supporting the investments, ownership, and operations of data centers should also be considered in the excise tax proposal.

6. **Data centers in space:** Public Citizen has serious concerns about proposals to put data centers in space. With that, we support the committee's work to tax data centers in space that service U.S. customers and companies that try to avoid being treated as a non-U.S.

[6] Federal Energy Regulatory Commission, Interconnection of Large Loads to the Interstate Transmission System (Docket No. RM26-4-000), FERC (23 October 2025), https://www.ferc.gov/rm26-4

[7] Energy Information Administration,EIA launches pilot survey on energy use at data centers, EIA (25 March 2026), https://www.eia.gov/pressroom/releases/press585.php

[8] Baker, Jim, Private equity cash fuels data center buildout, Private Equity Stakeholder Project (26 May 2026), https://pestakeholder.org/news/private-equity-cash-fuels-data-center-buildout/ ; Goldman Sachs, Private Markets Are Expected to Have a Growing Role in Data Center Financing, Goldman Sachs (12 June 2026), https://www.goldmansachs.com/insights/articles/private-markets-expected-to-have-growing-role-in-data-center-financing

asset. The committee should additionally require U.S. owners and operators to register any data center assets in space to prevent further tax avoidance by claiming that they are not servicing U.S. customers.

7. **Use of revenue:** In addition to the above uses of the revenue from the excise tax should energy use considerations be included (i.e., support for energy bills and clean energy programs), the revenue should also be used to support communities negatively impacted by data centers and workers who lost their jobs due to AI. Other valuable uses of the revenue include supporting AI safety and literacy programs, apprenticeship and job transition programs, or grants for community-created programs in areas adversely impacted by AI and data centers. Public Citizen welcomes further discussion on additional ideas on the use of revenue for the excise tax with the committee.

Additionally, the committee should consider proposing, either as part of this proposal or a separate effort, limiting data center development on federal lands.

Thank you for considering these ideas and policy considerations while moving forward on the taxation proposal for data centers. If you would like to meet and discuss these ideas further or have questions, please reach out to Meghan Pazik, senior policy advocate with Public Citizen's Climate Program (mpazik@citizen.org).

Sincerely,

Public Citizen's Climate and Energy Program