



Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)

Purchaser: Complete this form and give it to the seller.

Purchaser and seller: Read the instructions on the back before completing or accepting this form.

Seller's information

| | | | |
|----------------|------|-------|----------|
| Name of seller | | | |
| Street address | City | State | ZIP code |

Purchaser's information

| | | | |
|---|------|--|----------|
| Name of purchaser | | Certificate of Authority number | |
| Street address | City | State | ZIP code |
| The Internet data center is located at the following address within New York State (if different from the address above): | | | |
| Street address | City | State | ZIP code |
| Mark an X in the appropriate box: | | | |
| <input type="checkbox"/> Single-purchase certificate | | <input type="checkbox"/> Blanket certificate | |

Part 1 — Exemptions for machinery and equipment

This machinery, equipment, and other tangible personal property will be used in the operation of an Internet data center. It is exempt from tax because:

- the property will be placed or installed in an Internet data center for use at the center, and
- it will be required for and directly related to the provision of Internet Web site services for sale by the operator of the center.

Part 2 — Exemptions for services to Internet data center property

The percentage of services provided **only** to the Internet data center is indicated on lines A, B, or C below. The percentage indicated will be exempt from state and local sales and use tax. (See Part 2 instructions on back. You must indicate a percentage (0-100) for this certificate to be valid. If the service provided is completely related to the Internet data center, write **100%**.)

A _____% Installing, maintaining, servicing, and repairing qualified tangible personal property

B _____% Maintaining, servicing, and repairing qualified real property

C _____% Protective services

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to the vendor as agent for the Tax Department for the purposes of section 1838 of the Tax Law and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

| | |
|--|---------------|
| Type or print name and title of owner, partner, or authorized person of purchase | |
| Signature of owner, partner, or authorized person of purchase | Date prepared |

Instructions

An operator of an Internet data center may use Form ST-121.5 to purchase tangible personal property or services exempt from tax to the extent they are used in the operation of an Internet data center located in this state. An *operator of an Internet data center* is a person that (i) provides Internet Web site services for sale and (ii) provides at this center the Internet Web site services of uninterrupted Internet access to customers' Web pages (twenty-four hours a day, seven days a week, three hundred sixty-five days a year) and continuous management of Internet traffic for the customers' Web pages. An operator of an Internet data center that is primarily engaged at the data center in the retail sale of its own *Internet access service* (as defined in section 1115(v) of the Tax Law) is not considered to be providing Internet Web site services for sale. Therefore, purchases by such an operator do not qualify for exemption from tax. *Primarily engaged* means that more than 50% of the use of all the property in an Internet data center that would otherwise be exempt from tax as Internet data center property, is used for providing an Internet access service.

Complete all required entries on the front of the form and give it to the seller.

You may use Form ST-121.5 as a blanket certificate covering the first and subsequent purchases of the same general type of property or service. However, each subsequent sales slip or purchase invoice based on this blanket certificate must show the purchaser's name and address.

Note: Contractors may purchase qualifying tangible personal property for use in an Internet data center exempt from tax only when the property is to be incorporated into the real property of the Internet data center as a capital improvement. They may also make tax-exempt purchases of services to install, maintain, service, or repair tangible personal property used for Web hosting. See Form ST-120.1, *Contractor Exempt Purchase Certificate*.

Part 1 – Exemptions for tangible personal property

You may purchase, exempt from tax, machinery, equipment, and other tangible personal property for use in the operation of the Internet data center. The tangible personal property that is covered by this exemption includes the following:

- computer system hardware, such as servers and routers;
- pre-written computer software;
- storage racks and cages for computer equipment;
- property related to building systems designed for an Internet data center, such as interior fiber optic and copper cables;
- property necessary to maintain the appropriate climate-controlled environment, such as air-filtration equipment, air-conditioning equipment, and vapor barriers;
- property related to fire control, such as fire-suppression equipment and alarms;
- power generators and power conditioners;
- property related to providing a secure environment, such as protective barriers;
- property that constitutes raised flooring when installed; and
- other similar property.

Part 2 – Exemptions for services to Internet data center property

Certain services rendered directly to or in relation to Internet data center property are exempt from tax. If any of these services relate to property that is both taxable and exempt from tax, an allocation may be used to determine the portion of the total receipt that is exempt from tax. An allocation based on square footage is acceptable to the Tax Department. However, an alternative allocation method may be chosen by the purchaser of the services, provided the method is reasonable. Allocations that are based on time or property values are examples of reasonable allocation methods.

The services shown on lines A, B, and C may be purchased exempt **only** up to the percentage indicated on this certificate by the purchaser. When this certificate is used as a blanket certificate, the percentage(s) used should be reviewed periodically. If any percentage changes, a new blanket certificate must be issued. The new certificate will cover

subsequent purchases, and will remain in effect until the percentage changes again.

If you cannot, in good faith, determine the exempt percentage, you must pay tax at the time of purchase and request a refund. If you estimate too high a percentage as exempt, you must pay tax on the portion that turns out to be taxable.

To the seller

The purchaser must give you an exemption certificate with all required entries completed no later than 90 days after delivery of the property or service sold, or the sale will be deemed to have been taxable at the time of the transaction. If you receive a certificate after the 90-day period, both you and the purchaser assume the burden of proving the sale was exempt. Additional substantiation may be required.

In addition, if you fail to collect tax as a result of accepting an improperly completed exemption certificate, you become personally liable for the tax plus any penalty and interest charges due, unless the certificate is corrected within a reasonable period of time. You must keep this exemption certificate for at least three years after the due date of the last return to which it relates, or the date the return was filed, if later. You must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate you have on file for that customer.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor.

See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Internet access: www.tax.ny.gov
(for information, forms, and publications)



Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082