



To be completed by the purchaser and given to the seller

New York State and Local Sales and Use Tax

Read instructions on back before completing or accepting this form

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

Form with fields for Name of seller, Name of purchaser, Street address, City, State, ZIP code, and Purchaser's Certificate of Authority number. Includes a checkbox for Single-purchase certificate or Blanket certificate.

This purchase I am making is exempt from state and local sales and use taxes because the property or services will be used for the operation of an Internet data center that is located in this state. The Internet data center is located at the following address (if different from above): (street address and city)

Part I - Exemptions for machinery and equipment

Checkbox: Machinery, equipment, and other tangible personal property, used in the construction and operation of an Internet data center. 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 relate to the provision of Internet Web site services for sale by the operator of the center.

Part II - Exemptions for services to Internet data center property

On lines A, B, or C below fill in the percentage of services provided only to the Internet data center which are tax exempt. If the total service provided is completely related to the Internet data center, indicate 100%. (The percentage must be filled in for this certificate to be valid, and only that percentage will be exempt from state and local sales and use tax.)

- (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 and complete; and I make these statements with the knowledge that willfully issuing a false or fraudulent certificate with the intent to evade tax is a misdemeanor, under section 1817(m) of the New York State Tax Law and section 210.45 of the Penal Law, punishable by a fine up to \$10,000 for an individual or \$20,000 for a corporation. I also understand that the Tax Department is authorized to investigate the validity of exemptions claimed or the accuracy of any information entered on this form.

Signature of owner, partner, officer of purchasing corporation, etc. | Print name and title | Date

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 (that is, 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 tangible personal property for use in an Internet data center exempt from tax. See Form ST-120.1.

Part I — Exemptions for tangible personal property

You may purchase, exempt from tax, machinery, equipment, and other tangible personal property for use in the construction and 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 II — 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.

Misuse of this form

Any person who intentionally issues a fraudulent exemption certificate will become liable for penalties and interest, in addition to the sales tax initially due. Some penalties that apply are:

- 100% of the tax due
- \$50 for each fraudulent exemption certificate issued
- A misdemeanor penalty (consisting of fines not to exceed \$10,000 for an individual or \$20,000 for a corporation)

In addition to the penalties imposed for misuse of an exemption certificate and any other penalties imposed by the Tax Law that may apply, your New York State *Certificate of Authority* can be revoked for falsifying an exemption certificate. Once this department has revoked your *Certificate of Authority*, you will be prohibited from conducting any business in New York State for which a *Certificate of Authority* is required.

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.

Privacy notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 8, 28, and 28-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer sales and use taxes or liabilities under the Tax Law, and for any other purpose 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 Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 338, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.



Need help?

Tax information: 1 800 972-1233
 Forms and publications: 1 800 462-8100
 From outside the U.S. and outside Canada: (518) 485-6800
 Fax-on-demand forms: 1 800 748-3676
 Internet access: <http://www.tax.state.ny.us>
 Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110