

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-12(30)S  
Sales Tax  
December 3, 2012

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION      PETITION NO. S120507B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether it is entitled to claim the exemption from sales and use tax found in Tax Law Section 1115(a)(37) for Internet data center operators.

We conclude that Petitioner is entitled, as an Internet data center operator, to claim the sales and use tax exemption found in Tax Law Section 1115(a)(37).

**Facts**

Petitioner owns a condominium interest in a high rise building in Manhattan and plans to develop the property exclusively for use as an Internet data center facility. The Internet data center facility will provide both a high security environment for the location of servers that host Internet web sites as well as uninterrupted Internet access.

Petitioner is planning to develop part of the building as “powered shell” space. The powered shell space will be partially outfitted by Petitioner for Internet data center use and powered shell tenants will make further significant investments of their own for additional equipment, machinery and tangible personal property required to complete the Internet data centers to suit their individual needs. Many of the powered shell tenants will be larger in nature, having significant Internet data center requirements, with sufficient capital to invest in the development of their Internet data center space.

Petitioner will also be developing part of the space as “turn-key” data center operations for its tenants, supplying the tenants with the necessary infrastructure for Internet data center operations. Such space is likely to be attractive to customers having smaller data center requirements including emerging businesses, since they will not be required to incur substantial capital and ongoing maintenance costs for building and maintaining data center infrastructure.

Further, Petitioner is developing “carrier equipment room” and “meet me room” space within the facility to house network service provider equipment and to support the exchange of Internet traffic between providers through cross-connections for the provision of uninterrupted Internet access to Petitioner’s customers. The network space is designed to

provide extra security to support a diverse carrier network resulting in a best of class network environment.

Upon completion of the development, Petitioner will operate and manage the data center facility as well as the carrier space and network.

### **Analysis**

Tax Law section 1105(a) imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided. Tax Law section 1110 imposes a compensating use tax on tangible personal property purchased at retail, except, as otherwise provided. Tax Law section 1115(a)(37)(i) exempts from tax:

Machinery, equipment and other tangible personal property specified herein, sold to a person operating an internet data center located in this state for use in such a center, where such property: (a) will be located or installed in a facility or structure which is an internet data center and (b) is required for and directly related to the provision of internet website services for sale by the operator of the center.

Examples of tangible personal property exempt from sales tax for an operator of any Internet data center include: computer system hardware, such as servers and routers; pre-written computer software; storage racks and cages for computer equipment; property necessary to maintain the appropriate climate-controlled environment, such as air-filtration equipment, air-conditioning equipment, and vapor barriers; power generators and power conditioners; property that will constitute raised flooring when installed; and other similar equipment. *See* TB-ST-405. Examples of services exempt from tax for an operator of any Internet data center include: installing, maintaining, servicing, and repairing qualified tangible personal property (Tax Law § 1105(c)(3)); maintaining, servicing, and repairing qualified real property (Tax Law § 1105(c)(5)) of the Tax Law; and protective and detective services (Tax Law § 1105(c)(8)). *See* Tax Law § 1115(y). 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. *See* Tax Law § 1115(y); TB-ST-405.

In addition, Tax Law section 1115(a)(37)(i) defines the operator of an Internet data center as:

a person (a) operating a facility which consists of a data center specifically designed and constructed to provide a high security environment for the location of servers and similar equipment on which reside internet websites; and (b) providing at such facility the internet website services of: (i) uninterrupted internet access to its customers web pages in a secure environment and (ii) continuous internet traffic management for its customers' web pages.

Petitioner is an operator of an Internet data center under the definition found in Tax Law section 1115(a)(37)(i) because it will operate the center upon its completion, in a high security environment and will provide uninterrupted Internet access. Therefore, Petitioner is entitled to claim the sales and use tax exemption found in Tax Law section 1115(a)(37).

DATED: December 3, 2012

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