



Operators of Internet Data Centers (Web Hosting) - Exemption Form ST-121.5

Introduction

An operator of an Internet data center may use [Form ST-121.5](#), *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*, to make tax exempt purchases of tangible personal property or services used in the operation of an Internet data center in New York State. This bulletin explains:

- how to use the certificate;
- what kinds of property and services can be purchased exempt from sales tax using [Form ST-121.5](#); and
- penalties that may be imposed for misuse of the certificate.

An *operator of an Internet data center* is a person who:

- operates a data center specifically designed and constructed as a high security environment for the location of servers and similar equipment that hosts Internet Web sites; and
- provides uninterrupted Internet access to customers' Web pages (i.e., 24 hours a day, 7 days a week, 365 days a year) and continuous management of Internet traffic for customers' Web sites.

See also Tax Bulletin [Internet Data Centers \(TB-ST-405\)](#).

How to use Form ST-121.5

If you are the purchaser, fill out [Form ST-121.5](#) and give it to the seller. You must give the seller a properly completed [Form ST-121.5](#) within 90 days after the delivery of the property or performance of the service. Sales tax exemption certificates may also be issued and accepted electronically. See [TSB-M-07\(1\)S](#), *Electronic Resale and Exemption Documents for Sales and Compensating Use Taxes*.

You may use [Form ST-121.5](#) as a single-purchase certificate, or as a blanket certificate covering the first and subsequent purchases of the same general type of property or service from the same seller.

Exemptions for machinery and equipment

You may make tax-exempt purchases of machinery, equipment and other tangible personal property for use in the operation of the Internet data center. The exemptions include:

- 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; and
- property that constitutes raised flooring when installed.

Exempt property must be:

- placed or installed in the Internet data center for use there; and
- required for, and directly related to, providing Internet Web site services for sale.

Internet Web site services **must include**, but are not limited to, the uninterrupted access and continuous traffic management services mentioned above.

Exemptions for services

The purchase or use of any of the following services is exempt from tax when rendered directly to or in relation to exempt Internet data center property:

- installing, maintaining, servicing, and repairing qualified tangible personal property;
- maintaining, servicing, and repairing qualified real property; and
- protective and detective services.

If 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. For additional information see Tax Bulletin [Internet Data Centers \(TB-ST-405\)](#).

Exemptions for a contractor, subcontractor, or repairman

A contractor, subcontractor, or repairman may:

- buy property exempt from tax **only** when the property is to be part of a capital improvement project at an Internet data center; or
- make tax-exempt purchases of services to install, maintain, service, or repair tangible personal property used for Web hosting.

A contractor, subcontractor or repairman cannot use [Form ST-121.5](#) to make exempt purchases, but must instead use [Form ST-120.1](#), *Contractor Exempt Purchase Certificate*.

Penalties

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 for sales tax purposes.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Tax Law: Sections 1115(a)(37), 1115(v), 1115(y), and 1145(a)(5)

Memoranda:

[TSB-M-00\(7\)S](#), *Sales and Use Tax Exemptions for Operators of Internet Data Centers (Web Hosting)*
[TSB-M-07\(1\)S](#), *Electronic Resale and Exemption Documents for Sales and Compensating Use Taxes*

Bulletins:

[Exemption Certificates for Sales Tax \(TB-ST-240\)](#)
[Internet Data Centers \(TB-ST-405\)](#)
[Sales and Use Tax Penalties \(TB-ST-805\)](#)