

Sales and Use Tax Exemptions for Operators of Internet Data Centers (Web Hosting)

On May 15, 2000, Governor George E. Pataki signed Chapter 63 of the Laws of 2000. This legislation, in part, amended the Tax Law to provide exemptions from the New York State and local sales and compensating use taxes for certain property that is purchased by the operator of an Internet data center and for certain services performed on or relating to the exempt property. These amendments are effective **September 1, 2000**.

For purposes of the exemptions, an “operator of an Internet data center” is a person that (i) operates a data center that is specifically designed and constructed to provide a high security environment for the location of servers and similar equipment that host Internet Web sites; and (ii) provides at such center the Internet Web site services of uninterrupted Internet access to customers’ Web pages (i.e., 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.

Exemptions for tangible personal property

The purchase or use of machinery, equipment, and certain other specified items of tangible personal property by an operator of an Internet data center that is located in this State is exempt from State and local sales and compensating use taxes. The property must be placed or installed in the Internet data center for use at the center. In addition, the property must be required for and directly related to the provision of Internet Web site services for sale by the operator of the center. Internet Web site services must include, but are not limited to, the uninterrupted access and continuous traffic management mentioned above.

Tangible personal property that is exempt from tax as Internet data center property 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 that are designed for an Internet data center, such as interior fiber optic and copper cables;
- property that is 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 which will constitute raised flooring when installed; and
- other similar property.

A contractor, subcontractor, or repairman may purchase this property exempt from tax when the property is to be incorporated into the real property of an Internet data center as a capital improvement.

(See Tax Law, Section 1115(a)(37).)

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 (Section 1105(c)(3) of the Tax Law);
- maintaining, servicing, and repairing qualified real property (Section 1105(c)(5) of the Tax Law); and
- protective and detective services (Section 1105(c)(8) of the Tax Law).

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. For example, if a protective service is hired to protect an entire three-story building that has an Internet data center located on the first floor, an allocation of the service based on the square footage of the building would be acceptable to the Department. If the service is employed to provide a greater (or lesser) amount of protection for the Internet data center, an allocation that is based on the time spent protecting the property or the values of the property that is being protected would be reasonable alternatives.

(See Tax Law, Section 1115(y).)

Exemption certificates

Form [ST-121.5, Exempt Use Certificate for Operators of Internet Data Centers \(Web Hosting\)](#), must be used by an Internet data center operator when purchasing the property and services that are exempt from tax. A contractor, subcontractor, or repairman must use Form [ST-120.1, Contractor Exempt Purchase Certificate](#).

Internet Web site services - Internet access services

For purposes of the exemptions, 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 the exemptions described in this memorandum. "Primarily engaged" means that more than 50 percent of the use of all of the property in an Internet data center that would otherwise be exempt from tax as Internet data center property is for providing an Internet access service.