

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(2)S
Sales Tax
February 22, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S141020A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], (Petitioner) located at [REDACTED]. Petitioner asks whether operating a specific facility it plans to build in New York would qualify it as an “operator of an internet data center” for purposes of Tax Law § 1115(a)(37). Petitioner also asks whether it may claim the sales tax exemption for specific equipment described in Tax Law § 1115(a)(37)(i). We conclude that Petitioner would be an operator of an internet data center, and therefore, may claim the sales tax exemption in Tax Law § 1115(a)(37).

Facts

Petitioner operates several data centers throughout the United States, and is considering building a data center in New York. Among other services, the data center would provide access to its customers’ web pages through Petitioner’s hosting services.

If constructed, the New York data center would be a traditional warehouse-style data center. It would consist of equipment including server racks, uninterrupted power supply systems, cooling systems, emergency generators, and a fiber optic network. Furthermore, the New York data center would be built to provide a high security environment for the location of its servers, as it would have 24-hour monitored security, including video surveillance, security guards and other such protections.

As for the data center’s operations, Petitioner would ensure that its online services would be constantly available and trustworthy. Petitioner would accomplish this by employing technicians to constantly monitor and address potential incidents that deviate from Petitioner’s desired operations systems. Such technicians would also address service disruptions or outages within Petitioner’s operations systems. Also, Petitioner would maintain a fully-developed Service Management Framework that would direct and formalize its operations systems to comply with international standards. Finally, Petitioner’s data center in New York would not be providing its customers with a connection to the internet.

Analysis

Tax Law § 1105(a) imposes sales tax on receipts from every retail sale of tangible personal property, except as otherwise provided. Tax Law § 1115(a)(37)(i) exempts from sales tax certain machinery, equipment and other tangible personal property that is sold to a person who operates an internet data center, as long as certain criteria are met. Specifically, the property must be located or installed in a facility or structure that is classified as an internet data center, and must be required for and directly related to the provision of internet website services for sale by the operator of the data center. Examples of such machinery and equipment include,

among other things, servers, routers, computer software, storage racks and cages for computer equipment, and interior fiber optic and copper cables.

Tax Law § 1115(a)(37)(i) sets forth strict requirements necessary to be considered an operator of an internet data center. First, the person must operate a facility that consists of a data center, and the center must be specifically designed and constructed to provide a high security environment for the location of servers and similar equipment responsible for maintaining internet websites. Second, the person must operate a facility that provides uninterrupted internet access to its customers' web pages in a secure environment. Third, the person must provide continuous internet traffic management for its customers' web pages. However, an operator of an internet data center who is primarily engaged in the retail sale of internet access service is not considered to provide internet web services for sale. *See* Tax Law § 1115(a)(37)(ii). "Primarily engaged" means that more than 50% of the use of all the machinery, equipment and other property, for which the exemption is claimed, is used for the provision of internet access services.

Based on the description provided, Petitioner's facility would qualify as an internet data center for purposes of Tax Law § 1115(a)(37)(i). If built, Petitioner's facility will be a data center designed to provide a high security environment for its customers' internet websites. For instance, Petitioner would install video surveillance and hire security guards to maintain a safe and secure environment around its facility and provide for constant monitoring. *See* TSB-A-14(15)S. Further, by employing technicians who will constantly monitor Petitioner's host systems, the facility will provide uninterrupted internet services that will be constantly available and secure. Such technicians will also ensure continuous internet traffic management that will allow its online services to be continuously available. Accordingly, we conclude that Petitioner's facility would qualify as an internet data center for purposes of Tax Law § 1115(a)(37)(i).

Petitioner would qualify as an operator of an internet data center, provided that it is not primarily engaged in providing internet access service for sale at its facility. Petitioner would be entitled to claim the sales and use tax exemption for the equipment described in Tax Law § 1115(a)(37)(i) that is required for and directly related to the provision of internet website services for sale by Petitioner and located or installed in Petitioner's internet data center. *See* Tax Law § 1115(a)(37)(ii); TSB-A-12(30)S.

DATED: February 22, 2016

/S/
Deborah R. Lieberman
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately

described all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.