

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

TSB-A-14(15)S
Sales Tax
July 2, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S121220C

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether it qualifies as an “operator of an internet data center” at a specified facility in New York pursuant to the exemption in Tax Law § 1115(a)(37)(i) for purchases of qualifying tangible personal property for use in an internet data center.

We conclude that the Petitioner is an “operator of an internet data center” pursuant to § 1115(a)(37)(i) of the Tax Law with regard to the specified facility.

Facts

Petitioner operates a 30,000 square foot purpose-built, fault-tolerant data center in Pearl River, New York (the “Facility”). The Facility includes approximately 20,000 square feet of specifically designed, highly secure, raised floor data center space for the location of servers and similar equipment that host internet web sites, as well as associated communications equipment and other equipment needed to support the use, maintenance and operation of the Facility. Petitioner uses the Facility to sell and service internet web applications for customers in the media and entertainment, financial and insurance services, government and education, healthcare and pharmaceutical, manufacturing and distribution, technology, direct marketing and professional services. Petitioner does not operate its own website operations at the Facility.

Petitioner’s controls, operational policies and procedures are designed and deployed to provide a highly secure environment for the location of internet data center hardware and software that host internet web sites for its customers. Petitioner provides uninterrupted internet access to its customers’ external and internal web pages and other customer applications 24 hours per day, 7 days per week, 365 days per year and continuous management of internet traffic for its customers’ websites and applications. To accomplish this, Petitioner delivers (i) specific monitoring services, (ii) bandwidth and traffic problem determination services, (iii) dynamic bandwidth and web server expansion services, and (iv) bandwidth and traffic load balancing.

According to Petitioner, “specific monitoring services” include what is known as “packet error (transmission) checking.” During this process, data is transmitted from point to point in groups (called “packets”) of data. A value, called a “checksum,” is calculated for each packet prior to and after the packet is transmitted. If that checksum value is the same on both ends of the transmission, then the packet was transmitted properly. Every packet transmitted is checked for accurate transmission using a checksum calculation.

Petitioner describes “bandwidth and traffic problem determination services” as follows: bandwidth is a measure of the amount of data transmitted between one point and another in a system. Bandwidth is expressed in terms of bits of data per second. A bit of data is a basic unit of information (usually 0 or 1). Petitioner monitors data transmission rates and data throughput (the total amount of data transmitted) in its internet data center in order to fulfill its responsibilities to customers to provide uninterrupted internet access to its customers’ web pages in a secure environment and continuous internet traffic management for its customers’ web pages. When needed, Petitioner expands capacity (*e.g.*, allocates additional transmission lines) and corrects any data transmission problems (*e.g.*, slowdowns) that may develop for customers in order to assure that those goals are achieved.

“Dynamic bandwidth and web server expansion services” describe the manner in which Petitioner adjusts bandwidth and adds web server resources dynamically as needed to meet changing customer web page and traffic demands. Load-balancing allows Petitioner to anticipate potential performance problems and resource bottlenecks. It can alert its customers to spread workload across more servers to balance load and maintain performance service levels.

In order to maintain a high security environment, the Facility uses 24x7x365 multi-tiered security monitoring, including badge access with multi-level security card entry, guard station, patrol, video surveillance, and controlled card-key access. The Facility is a fully redundant, fault-tolerant, purpose-built facility with multiple power utility feeds, diesel generator power, uninterruptible power supply and redundant cooling designed and constructed to provide a secure environment specifically for the location of internet web site servers and equipment necessary for an internet data center. Petitioner notes that it was the only significant data center in the New York City tri-state metropolitan area to remain fully operational without interruption of utility power throughout Superstorm Sandy, Hurricane Irene and the October 2011 Halloween Nor’easter.

Petitioner continuously upgrades its internet network equipment and software monitoring and security tools, as well as its server equipment, in order to ensure that its customers have uninterrupted access to their websites and data, and to constantly ensure that its customers receive optimal performance. The Facility is supported by two of each of the following infrastructure components: two utility power feeds (multiple active power and cooling distribution paths), two back-up diesel-generator systems, and two of each infrastructure component with no single point of failure. The Facility is designed so that it can sustain an unplanned worst-case infrastructure failure while remaining operational.

Petitioner specifically indicated that it is not engaged in the retail sale of its own internet access service (*i.e.*, providing connection to the internet).

Analysis

Tax Law § 1105(a) imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided. Tax Law § 1115(a)(37)(i) exempts from such tax machinery, equipment and other tangible personal property specified therein, 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 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. For purposes of these exemptions, an operator of an internet data center that is primarily engaged at the data center in the retail sale of "internet access service" (as defined in Tax Law § 1115[v]) is not considered to be providing internet web site services for sale.

Petitioner asks whether it qualifies as the operator of an internet data center. Tax Law § 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. However, an operator of an internet data center primarily engaged in the sale from the center of internet access services exempt from tax under Tax Law §1115(v) is not providing internet website services for sale.

Petitioner has established that it qualifies as an operator of an internet data center under the definition found in Tax Law § 1115(a)(37)(i). It operates the Facility in a highly secure, regulated and monitored environment. The Facility has been specifically designed and constructed for high security. It constantly provides uninterrupted internet access to its customers' external as well as internal web pages and other customer applications along with continuous internet traffic management for its customer's web pages through (i) its specific monitoring services, (ii) bandwidth and traffic problem determination services, (iii) dynamic bandwidth and web server expansion services, and (iv) bandwidth and traffic load balancing.

Assuming that Petitioner is not primarily engaged in providing internet access services for sale at the Facility, it is entitled to claim the sales and use tax exemptions found in Tax Law §§ 1115(a)(37) and 1115(y) for equipment covered by that exemption for use at that Facility, and specified services related to that equipment.

DATED: July 2, 2014

/S/

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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 describes 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.