



New York State and Local Sales and Use Tax Exempt Use Certificate for Computer System Hardware

To be completed by the purchaser and given to the seller.

Read instructions on the back before completing or accepting this form.

(Please print or type)

Name of seller			Name of purchaser		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code
Purchaser's <i>Certificate of Authority</i> number (see instructions)					

Check one: Single purchase certificate

Blanket certificate

My purchase is exempt from State and local sales and compensating use taxes because the tangible personal property will be used for the exempt purpose indicated below. (Check the box next to the exemption you are claiming.)

- (a) **Computer system hardware** which will be used directly and predominantly in the design and development of computer software for sale.
- (b) **Computer system hardware** purchased on or after March 1, 2001, which will be used directly and predominantly in providing the service, for sale, of designing and developing Internet Web sites.
- (c) **Computer system hardware** purchased on or after March 1, 2001, which will be used directly and predominantly in a combination of the uses described in (a) and (b) above.

- These exemptions are also allowed for **embedded software** that comes as part of computer system hardware. However, these exemptions do **not** apply to other pre-written software, including operating system software and application software.
- These exemptions do **not** apply to the purchase of consumable supplies, or tools used in the operation, maintenance or repair of computer system hardware, or to the services of installing, maintaining, servicing, or repairing computer system hardware.
- See instructions on back for additional information.

If this is a blanket certificate and in the future I make a purchase that does not qualify for the exemption, I will pay the appropriate tax to the seller at the time of purchase.

I certify that the above statements are true and complete, and I make these statements with the knowledge that willfully issuing a false or fraudulent certificate with the intent to evade tax is a misdemeanor, under section 1817(m) of the Tax Law and section 210.45 of the Penal Law, punishable by a fine of up to \$10,000 for an individual or \$20,000 for a corporation. I also understand that the Tax Department is authorized to investigate the validity of exemptions claimed or the accuracy of any information entered on this form.

Signature of owner, partner, officer of purchasing company, etc.	Print name and title	Date

General information

The purchase, lease, or rental of computer system hardware that is used or consumed directly and predominantly in designing and developing computer software for sale is exempt from New York State and local sales and use tax.

Effective March 1, 2001, the computer system hardware exemption has been expanded to include computer system hardware used directly and predominantly in providing the service, for sale, of designing and developing Internet Web sites; or used directly and predominantly in a combination of such web site service and in designing and developing software for sale.

As used above, *designing and developing* includes systems analysis, program design, coding, testing, debugging, and documentation.

The purchase of computer system hardware is eligible for the exemption only if the hardware is used **directly** and **predominantly** for the above exempt purposes.

Directly means that the computer system hardware is actually used in, or has an active, causal relationship in designing and developing computer software for sale or in providing the service, for sale, of designing and developing Internet Web sites.

Predominantly means that the hardware must be used more than 50% of the time in designing and developing computer software for sale or in providing the service, for sale, of designing and developing Internet Web sites for sale.

Purchases eligible for exemption

Computer system hardware is the physical components from which a computer system is built. The term includes associated parts and embedded software.

Computer system hardware may include: microcomputers, minicomputers, main-frame computers, personal computers, external hard drives, portable disk drives, compact disc read only (CD ROM) drives, external modems, monitors, keyboards, mice, printers, scanners, servers, network interfaces, network hubs, and network routers.

Associated parts are any component of, or attachment to, computer system hardware that is used in connection with, and is necessary to, the performance of the hardware's operation. By definition, a part cannot accomplish the work for which it is designed independent of the computer system hardware for which it is intended to be a component.

Parts may include: motherboards, daughterboards, central processing units, controller cards, internal hard drives, internal modems, network interface cards, sound cards, video cards, and network wiring and cables.

Embedded computer software that comes as part of computer system hardware is exempt from sales and use tax. *Embedded software* is software that is actually an integral part of the computer, typically in the form of a memory chip.

Purchases not eligible for exemption

Charges for the service of installing, maintaining, servicing or repairing computer system hardware are not eligible for this exemption. Also, charges for support packages and warranties are not eligible for this exemption.

Consumable supplies such as toner, ink, printer paper, floppy diskettes, removable disk cartridges, high capacity disks, portable disk drive disks, and writable and erasable CD-ROM discs are not eligible for this exemption.

Computer software – the purchase of pre-written computer software, whether pre-installed or not, is not eligible for this exemption unless it is embedded software. *Pre-written software* includes operating systems, firmware, algorithms, data sets, compilers and translators, assembly routines, utility programs, and application programs. The sale of custom software is not subject to sales or use tax (see TSB-M-93(3)S). For information on the taxability of computer software used in an Internet Data Center, see Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*.

If a computer system hardware package includes pre-written software (other than embedded software), the seller must reasonably allocate the selling price between the hardware and the pre-written software and collect tax on the amount allocated to the pre-written software. Failure to reasonably allocate the selling price between the hardware and the non-embedded pre-written software will result in the entire sales price of the computer system hardware package being subject to tax.

Tools used in the operation, maintenance, or repair of computer system hardware are not eligible for this exemption.

See *TSB-M-98(5)S* for further information relating to this exemption.

To the purchaser

Complete this certificate and give it to the seller.

If you check the *Blanket certificate* box, this certificate will serve to exempt the first and subsequent purchases qualifying for the exemption. If you make future purchases from this seller that do not qualify for the exemption, you must pay sales tax at the time of purchase.

A blanket certificate issued prior to March 1, 2001, may not be used to make exempt purchases of computer system hardware for use in providing the service, for sale, of designing and developing Internet Web sites; rather, you must issue to the seller a new Form ST-121.3, with a print date of (3/01) or later, as a blanket certificate or a single-purchase certificate, as the case may be.

If you are registered or required to be registered with the New York State Tax Department as a person required to collect sales tax, enter your *Certificate of Authority* identification number in the appropriate box on the front. If you are not required to be registered, enter **N/A** (not applicable).

To the seller

The purchaser must give you an exempt use certificate with all entries completed no later than 90 days after delivery of the property, or the sale will be deemed to have been taxable at the time of the transaction. If you receive the certificate after the 90-day period, both you and the purchaser assume the burden of proving the sale was exempt, and additional substantiation may be required.

In addition, if you fail to collect tax as a result of accepting an improperly completed exemption certificate, you become personally liable for the tax plus any penalty and interest charges due, unless the certificate is corrected within a reasonable period of time or you otherwise prove that the transaction was not subject to tax. You must keep any exemption certificate you receive for at least three years after the due date of the last return to which it relates, or the date the return is filed, if later. You must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate you have on file for that customer.

If the *Blanket certificate* box is checked, you may consider this certificate part of any order received from the purchaser during the period that the blanket certificate remains in effect. However, each subsequent sales slip or purchase invoice based on this blanket certificate must show the purchaser's name and address. A blanket certificate remains in effect until the purchaser gives you written notice of revocation, or you have knowledge that the certificate is false or was fraudulently produced, or until the Tax Department notifies you that the purchaser may not make exempt purchases.

Misuse of this certificate

Any person who issues a false or fraudulent exemption certificate may be liable for penalties and interest in addition to the tax initially due. Some penalties that apply are:

- 100% of the tax due
- \$50 for each fraudulent exemption certificate issued
- A misdemeanor penalty (consisting of fines not to exceed \$10,000 for an individual or \$20,000 for a corporation)
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor.

Need help?

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Internet access: www.tax.state.ny.us

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

Privacy notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 8, 28, and 28-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer sales and use taxes or liabilities under the Tax Law, and for any other purpose authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 338, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.