



DATA CENTER EXEMPTION

Authorization: 144.810 RSMo.

Guidelines

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Data Center Exemption – General Information

The purpose of the program is to incentivize the location and expansion of data centers in the State of Missouri by providing an exemption, for a period of time, of the sales and utility taxes associated with a variety of activities necessary to build a new facility or expand an existing facility. The Department of Economic Development (DED) is the agency administering the program.

The new construction or expansion must meet a variety of new job creation and investment thresholds listed in these guidelines in order to gain access to the sales tax exemptions.

The program is designed for a data center company or “consortium” of data center companies who will locate in the same new facility, or expand an existing facility. The company or companies must be known and must apply jointly and cooperatively under one application. That relationship must be memorialized at the minimum by a Memorandum of Understanding. The Data Center Exemption Program is not intended to be a speculative development program, whereby a facility may be constructed by a developer, without known tenants.

There are two types of taxpayers recognized in the Data Center Exemption program: “constructing taxpayers” and “operating taxpayers”. A combination of “constructing taxpayers” and “operating taxpayers” working together at the same facility are known as a “project taxpayer”.

A “constructing taxpayer” (one who builds the facility or expands the facility) may not apply alone, unless they are also an “operating taxpayer” (one who operates the data center). New full time jobs, paid at an average in excess of 150% of the “county average wage”, employed to work in the data center operations at the facility hired by the “operating taxpayer” (or operating and “constructing taxpayer” if it is the same company) count to meet the required threshold. Construction jobs or part-time jobs are not eligible. Therefore, a “constructing taxpayer” that is also not an “operating taxpayer” may need that relationship with a separate company who meets the definition of an “operating taxpayer” to establish a “project taxpayer” relationship so that the jobs threshold may be met. The investment made by both entities may be aggregated together to meet the required thresholds.

It is important to note that the Department of Revenue (DOR) will issue tax exemption certificates annually, in the name(s) of the individual company(ies) that make up the “project taxpayer”; presumably each of which is making eligible investments. Those exemption certificates are not transferable. They may not be assigned or used by another company. If a developer proposes to be the “constructing taxpayer” and has a relationship with a tenant who meets the definition of an “operating taxpayer”, and the developer is going to build the building, only he/she may receive the exemption certificate for building materials. So, if the developer/“constructing taxpayer” is going to hire a contractor to build the building on their behalf, then the developer/“constructing taxpayer” must purchase all of the building materials themselves in order to take advantage of the tax exemption. The Department of Revenue will

not accept purchases made by a contractor on behalf of another entity. Only entities defined in the “project taxpayer” relationship may be issued exemption certificates. In that same example, the “operating taxpayer”, who may presumably pay the utility bills as part of their tenant relationship, may be the only entity to receive the exemption since the certificate for utilities and the payment documentation will be made out in their name.

Sales tax exemption certificates will be awarded and issued annually based upon a plan for expenditures submitted with the “project taxpayer” application. Since DED is required to determine if the exemptions versus the investment will still result in a positive net fiscal return to the state, the certificates will be valid for a defined amount and a defined term. Each “project taxpayer” will enter into an agreement with DED that defines the terms of the benefit and any recourse that may be necessary in the event of job loss or failure to achieve investment amounts. The “project taxpayer” will be required to submit annual reports to DED.

It is feasible, as a plan is formulated, that the taxpayers (operating and constructing) that make up a “project taxpayer” locating in one facility may use different exemption periods (10 years expanding-15 years new). Since “constructing taxpayers” may seek a refund for expenses incurred and paid prior to the Notice of Intent for a period not earlier than the latter of start of construction or August 28th, 2015, their exemption period may run on one consecutive term of years. And, since the “operating taxpayer” may elect to postpone the start of their exemption period for up to 2 years after the execution of the Data Center Program Agreement, then their exemption period may run on a different consecutive term of years.

The program definitions and processes for application are found in the guidelines below.

Data Centers Defined

For the purposes of this incentive, a data center is the following:

- Taxpayer(s) primarily engaged in data processing, hosting and related services (NAICS 518210); or
- Taxpayer(s) primarily engaged in internet publishing and broadcasting and web search portals at the business facility (NAICS 519130).

Types of eligible facilities:

- Expanding facility (can include expanding an existing facility or a replacement facility and was in operation in Missouri as a data storage center prior to August 28, 2015)
- New facility (any facility that did not exist prior to August 28, 2015)

Requirements	Expanding Facility (in operation as a data center in MO prior to 8/28/2015)		New Facility (any facility that did not exist prior to 8/28/2015)	
Investment	\$5 million "investment"	Within 12 months of conditional approval	\$25 million "investment"	Within 36 months of conditional approval
Jobs	5 new FT* jobs with avg. wage of 150% of "Co. Avg. Wage"	Within 24 months of conditional approval	10 new FT* jobs with avg. wage of 150% of "Co. Avg. Wage"	Within 36 months of conditional approval
Benefits	100% of state and local sales and use taxes**	For a project period not to exceed 10 years	100% of state and local sales and use taxes*	For a project period not to exceed 15 years

*FT=For the purposes of this program, full-time employees are those scheduled to work at least 35 hours/week at the facility.

**Taxes defined, levied, or calculated under section 32.085, sections 144.010-144.525, sections 144.600-144.761 or section 238.235.

Expanding Facility

- May be an existing facility consisting of construction, extension, improvement, equipping and operation.
- May be a facility in this state which replaces another facility located within this state which the taxpayer or related taxpayer previously operated but discontinued operations within one year prior to "commencement of commercial operations" at the new facility.
- Only "investment" that occurs after the conditional approval and within 12 month of the conditional approval, will be considered "investment" for meeting the \$5 million threshold.
- Project "investment" related to the expansion prior to the conditional approval but on or after August 28, 2015, may count towards the exemption.

New Facility

- Construction, extension, improvement, equipping and operations of a new facility.
- Is acquired or leased to an “operating taxpayer” on or after August 28, 2015 as indicated by:
 - Transfer of title
 - Transfer of possession under a binding contract to transfer title
 - Or an “operating taxpayer” takes possession of the facility under the terms of the lease on or after August 28, 2015
 - Or, if the facility is constructed, erected, or installed by or on behalf of an “operating taxpayer”, such construction, erection or installation is completed after August 28, 2015
- A new facility shall continue to be a new facility regardless of a subsequent change in or addition of “operating taxpayers” or “constructing taxpayers”.
- **New facilities that later expand**—Any project taxpayer who submits a Notice of Intent (NOI) to DED to expand a new facility by additional construction, extension, improvement or equipping within 5 years of the date the new facility became operation(al) shall be entitled to request DED undertake additional analysis to determine net fiscal benefit of the expansion over 10 years and shall be entitled to an exemption not to exceed the fiscal benefit for a period of not to exceed 15 years.
- **Not considered a new facility**—Any facility which was acquired by an operating or “constructing taxpayer” from another person or persons on or after August 28, 2015, and such facility was employed prior to August 28, 2015 by any other persons in the operation of a data storage center shall not be considered a new facility.

Investment

Investment includes the value of real and depreciable personal property, acquired as part of the new or expanding facility project which is used in the operation of the facility following conditional approval of an exemption.

- If more than one taxpayer is responsible for a project, the investment requirement may be met by an “operating taxpayer”, a “constructing taxpayer”, or a combination of both.
- Office supplies or desks do not qualify as equipment under RSMo 144.810.2. (2) or 144.810.4(2) or tangible personal property and materials for constructing, repairing or remodeling of a new or expanding data center under RSMo 144.810 2.(3) or 144.810 4. (3).

New Jobs

New job calculation = total number of full-time (FT)* employees located at the project facility that exceeds the greater of:

- Number of FT employees located at the project facility on the date of the submission of the project plan, or
- Average number FT employees at the project facility for the 12 month period prior to the submission of the project plan.

All new jobs must have an average wage of at least 150% of the county average wage.

*For the purposes of this program, full-time employees are those who are scheduled to a minimum of 35 hours/week at the facility.

Benefits

- The exemption period for expanding facilities is 10 years.
- The exemption period for new facilities is 15 years.
- The exemption shall start with the first year in which the “project taxpayer(s)” expend dollars for the expansion or new facility for which an exemption will be refunded or claimed.

Exemption

An exemption of 100% of the state and local sales and use taxes defined, levied, or calculated under section 32.085, sections 144.010-144.525, sections 144.600-144.761 or section 238.235.

Net Fiscal Benefit

The exemption is limited to the **net fiscal benefit** of the state calculated over a 10-year period as determined by DED using the Regional Economic Modeling, Inc (REMI) data set. REMI is an economic modeling tool, calibrated annually to the state’s budget which incorporates regional wage, construction, and economic data. REMI will be used to determine a cost benefit and the point at which there is a fiscal return to the state’s General Revenue based on project inputs (jobs and investment) and costs (sales tax exemptions) by year.

No recipient of an exemption under the data center program may also receive other business recruitment incentives.

Expanded Facility - Incremental Usage

- Electric energy, gas, water, and other utilities including telecommunications and internet services used in the data storage center;
- All machinery, equipment and computers used in any **expanding** data storage center; and
- All sales at retail of tangible personal property and materials for the purpose of constructing, repairing, or remodeling any expanding data storage center.

The calculation of benefit is based upon units of measure: kilowatt hours, gallons, cubic feet or other applicable measures as opposed to dollars (to account for increases in utility rates).

New Facility – New Usage

- Electric energy, gas, water, and other utilities including telecommunications and internet services used in the data storage center;
- All machinery, equipment and computers used in any **new** data storage center; and

- All sales **at retail** of tangible personal property and materials for the purpose of constructing any new data storage center.
The calculation of benefit is based upon dollars spent.

Applicants

“Project taxpayers” may file the Notice of Intent with the Department of Economic Development (DED). “Project taxpayers” may include both **known** “constructing taxpayers” and **known** “operating taxpayers”. (See Definitions section.)

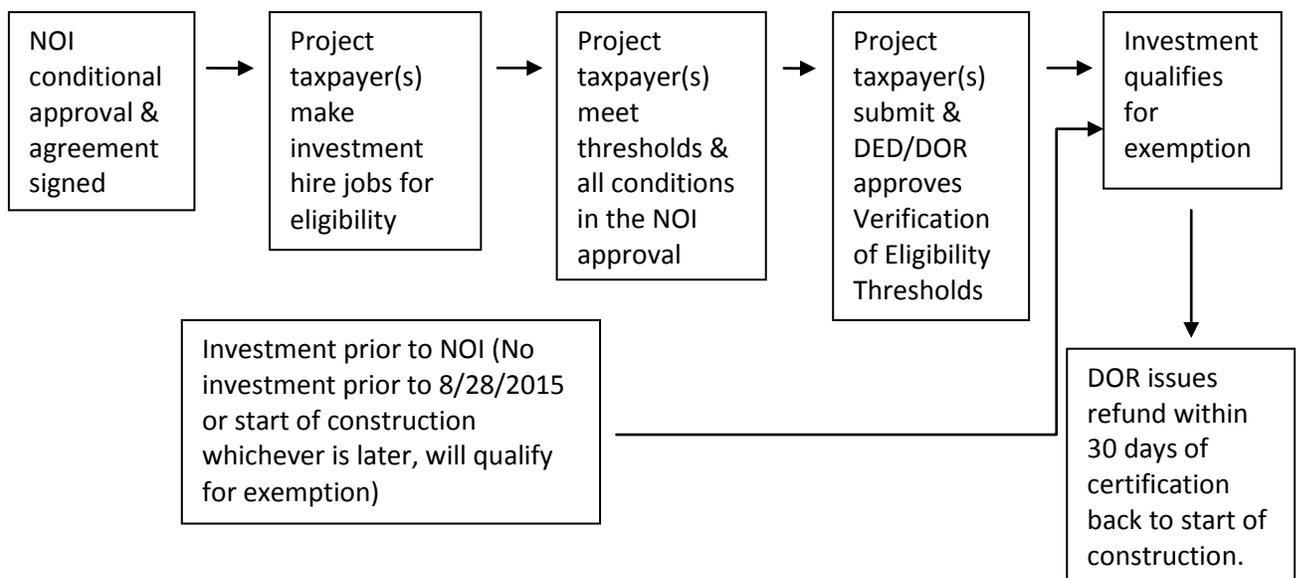
At the time of application, the entities proposed to make up the thresholds of the jobs and investment must be known taxpayers and submitted with the NOI and Project Plan. The program does not allow for speculative projects.

Process to Apply

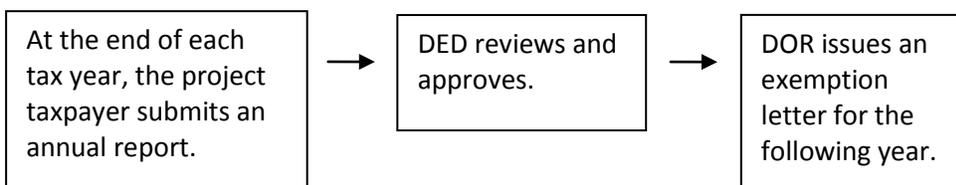
- Project taxpayer (applicant) submits the following:
 - Notice of Intent (NOI)
 - List of all employees at the facility
 - E-Verify Memorandum of Understanding (MOU)
 - **All applicants must:** 1) enroll in E-Verify, 2) check the box on the Certification confirming enrollment and participation in E-Verify, and 3) provide supporting documentation.
 - The **E-Verify Program**, conducted jointly by the U.S. Citizenship and Immigration Services (USCIS) Verification Division and the Social Security Administration (SSA), is designed to provide employment status information to determine the eligibility of applicants for employment.
 - E-Verify requires that participating commercial employers use the automated Verification Information System (VIS) to check the SSA and the USCIS databases to verify the employment authorization of ALL newly hired employees.
 - An employer's participation in E-Verify is free. Access the E-Verify website at: <https://e-verify.uscis.gov/enroll/>
 - Tax clearance for each “project taxpayer”, and
 - Project Plan.
- DED reviews all documentation to determine the following:
 - Eligibility for the program;
 - Whether the facility is an existing or new facility.
 - That the amount of the exemption does not exceed the projected “net fiscal benefit to the state calculated over a 10 year period” using the Regional Economic Modeling, Inc. dataset; and
 - That the project plan indicates that the required investment and job numbers will be met.
- DED provides either a conditional approval or denial within 30 days of receipt of NOI to project taxpayers (applicant) and to DOR.

- DED issues Data Center Program Agreement document to project taxpayers for execution (terms and conditions for repayment and penalties, compliance and reporting).
- Applicant performs work (retain all receipts).
- Applicant sends project paperwork to DED for certification including executed agreement, if not provided previously.
- DED reviews and sends to DOR review.
- DOR approves and DED certifies to applicant.
- DOR refunds sales/use tax and issues annual certificates, as applicable.
- Applicant provides annual reporting to DED.

Flowchart for NOI to Refund of Exemption Process



Flowchart for Subsequent Years



The Data Center Program Agreement will provide the specific recourse or corrective action if DED cannot approve an annual report as submitted.

Other Program Information

- Certifications may be dated retroactively to the first day of construction on a new facility or the first day of the expansion of the facility for expanding, whereby applicable

exemption amounts may then be refunded by DOR (no exemption will be refunded for expenses prior to August 28, 2015).

- The 10 year (for Expanding) or 15 year (for New Facilities) exemption period will include all consecutive years during which all requirements are met beginning with the first year of expenses for which benefits were realized.
- The commencement of the exemption period may be delayed at the option of the “operating taxpayer” but not more than 24 months from the execution of the agreement.
 - The “operating taxpayer” must indicate this in the Project Plan (may be a different benefit period than the “constructing taxpayer”.)
- A certificate in the hands of a taxpayer that is no longer an operating or “constructing taxpayer” of the new or expanding project facility shall be invalid.
- New certificates of exemption shall be issued to successor taxpayers at such new or expanding facility projects.
- The right to successor taxpayers shall exist without regard to subsequent levels of investment in the new or expanding facility.

Filling out “Expanding Facility—Proposed 10 Year Plan”

Employment Tab

- “Proposed Date of Expansion of Facility”—Date expansion will (did) begin.
- “Proposed Date of Submission of NOI”—Date NOI is submitted.
- “Number of Full-Time Employees at Facility on Date of Submission of the Project Plan”—“Project taxpayer(s)” should tally the number of full-time employees at the facility for all companies listed on the NOI on the date of submission of the project plan (with NOI).
- “Average number of FT employees at facility for the 12 month period prior to submission of the project plan (with NOI)”--“Project taxpayer(s)” should tally the number of employees at the facility on the last day of each month for the year immediately preceding the Project Plan submission for all the companies listed on the NOI, and then take the average of those full-time employees. Each month’s number will be entered on the NOI, Section 4. The average then will be entered in this field on the Project Plan.
- “Number of new jobs at facility within 24 months of conditional approval”—Number of full-time employees the “project taxpayer(s)” project there will be at the facility within 24 months of the conditional approval of the NOI for all the companies listed on the NOI.

Utilities Tab

- “Base Year Usage (KWH, gal, cf, other unit of measure)—For each utility, the “project taxpayer(s)” should enter the amount of usage for the calendar year immediately preceding the year of expansion. Ex: If expansion work began in August of 2015, the base year is January 1, 2014 through December 31, 2014.
- “Projected Year ___ Total Usage (KWH, gal, cf, other unit of measure)—For each utility, the “project taxpayer(s)” should project the total amount of usage the facility will have

in the first calendar year for which they are requesting the exemption. The first year of exemption for an “operating taxpayer” may be different than the first year of a “constructing taxpayer”. The first calendar year for an “operating taxpayer” cannot be later than 24 months after the execution of the Data Center Program Agreement.

- “Projected Year ___ Incremental Usage (KWH, gal, cf, other unit of measure)” —For each utility, the “project taxpayer(s)” should project the amount of additional usage the facility will have in the first calendar year for which they are requesting the exemption over the base. The first year of exemption for an “operating taxpayer” may be different than the first year of a “constructing taxpayer”. The first calendar year for an “operating taxpayer” cannot be later than 24 months after the execution of the Data Center Program Agreement.
- “Projected Year ___ Incremental Utility Cost” —“Project taxpayer(s)” should project the amount of additional utility cost the facility will have for the first calendar year for which they are requesting the exemption over the base. The first year of exemption for an “operating taxpayer” may be different than the first year of a “constructing taxpayer”. The first calendar year for an “operating taxpayer” cannot be later than 24 months after the execution of the Data Center Program Agreement.
- “Project Year ___ State Sales Tax” —For each utility, “project taxpayer(s)” should calculate the amount of state sales tax that it (they) will pay for all applicable utilities at the facility in the first calendar year for which they are requesting the exemption over the base. The first year of exemption for an “operating taxpayer” may be different than the first year of a “constructing taxpayer”. The first calendar year for an “operating taxpayer” cannot be later than 24 months after the execution of the Data Center Program Agreement.

All subsequent years on the spreadsheet will follow the same instructions for the specific year.

Construction/Equipment Purchases Tab

- “Projected Year ___ Total Purchases (equipment/machinery/construction materials/other)” —“Project taxpayer(s)” should project the amount of purchases that it (they) will have at the facility in the first calendar year of the expansion. This amount should reflect costs that are not earlier than the start of construction or August 28, 2015, whichever is later.
- “Projected Year ___ State Sales Tax” —“Project taxpayer(s)” should calculate the amount of state sales tax that it (they) will pay for all purchases at the facility in the first calendar year of the expansion. This amount should reflect State sales tax paid for costs that are not earlier than the start of construction or August 28, 2015, whichever is later.

All subsequent years on the spreadsheet will follow the same instructions for the specific year.

- “Totals” —Following year 10 information, the Totals column will include all 10 years of Projected Years 1-10 State Sales Tax.

Filling out “New Facility—Proposed 15 Year Plan”

Employment Tab

- “Proposed Date of Start of Construction of New Facility (may equal year 1, must not be prior to August 28, 2015)” —Date construction is scheduled to begin or did begin.
- “Date of Transfer of Title, Date of transfer of possession under a binding contract to transfer title, Date an “operating taxpayer” takes possession of the facility under the terms of a lease or if newly constructed, the Date of Completion of Construction.” — “Project taxpayer(s)” should provide a projected date, based on the above selections, which indicates when the facility will be operational.
- “Number of Full-Time Employees at New Facility on Date of Submission of the Project Plan” —“Project taxpayer(s)” should tally the number of full-time employees at the facility for all companies listed on the NOI on the date of submission of the project plan.
- “Average number of FT employees at facility for the 12 month period prior to submission of the project plan (with NOI)” --“Project taxpayer(s)” should tally the number of employees at the facility on the last day of each month for the year immediately preceding the Project Plan submission for all the companies listed on the NOI, and then take the average of those full-time employees. Each month’s number will be entered on the NOI, Section 4. The average then will be entered in this field on the Project Plan.
- “Number of new jobs at facility within 36 months of conditional approval” —Number of full-time employees the “project taxpayer(s)” project there will be at the facility within 36 months of the conditional approval of the NOI for all the companies listed on the NOI.

Utilities Tab

- “Projected Year ___ Total Utility Usage” —For each utility, the “project taxpayer(s)” should project the total amount of usage it (they) will incur at the facility in the first calendar year for which they are requesting the exemption. The first year of exemption for an “operating taxpayer” may be different than the first year of a “constructing taxpayer”. The first calendar year for an “operating taxpayer” cannot be later than 24 months after the execution of the Data Center Program Agreement.
- “Projected Year ___ Utility Cost” —For each utility, the “project taxpayer(s)” should project the total utility cost it (they) will incur at the facility for first calendar year for which they are requesting the exemption. The first year of exemption for an “operating taxpayer” may be different than the first year of a “constructing taxpayer”. The first calendar year for an “operating taxpayer” cannot be later than 24 months after the execution of the Data Center Program Agreement.
- “Project Year ___ State Sales Tax” —For each utility, “project taxpayer(s)” should calculate the amount of state sales tax that it (they) will pay for all applicable utilities at the facility in the first calendar year for which they are requesting the exemption. The first year of exemption for an “operating taxpayer” may be different than the first year

of a “constructing taxpayer”. The first calendar year for an “operating taxpayer” cannot be later than 24 months after the execution of the Data Center Program Agreement.

Construction/Equipment Purchases Tab

- “Projected Year 1 Total Purchases (equipment/machinery/construction materials/other”—“Project taxpayer(s)” should project the amount of purchases that it (they) will have at the facility in the first year of the construction. This amount should reflect costs that are not earlier than the start of construction or August 28, 2015, whichever is later.
- “Projected Year 1 State Sales Tax”—“Project taxpayer(s) should calculate the amount of state sales tax that it (they) will pay for all purchases and utilities in the first year of the construction. This amount should reflect costs that are not earlier than the start of construction or August 28, 2015, whichever is later.

All subsequent years on the spreadsheet will follow the same instructions for the specific year.

- “Totals”—Following year 15 information, the Totals column will include all 15 years of Projected Years 1-15 State Sales Tax.

Minimum Agreement Requirements

Cooperation Agreement

- The cooperation agreement can be a contract, partnership agreement, joint venture agreement or memorandum of understanding.
- All taxpayers making up the “project taxpayers” must be a party in the agreement.
- Agreement must include the date and term.
- Agreement must outline the responsibilities of each taxpayer, including how many jobs, how much investment and a timeline for the creation of jobs and investment.
- Agreement must reference any components of any landlord/tenant agreement. Ex: The taxpayer(s) responsible for utilities, length of the term of those agreements, etc.
- Agreement must outline how the benefits will be allocated.
- Agreement must identify the responsibility for replacement taxpayers if any of the parties should leave the facility.
- Agreement must include any/all consideration making it a binding agreement.

Data Center Program Agreement Components

The Data Center Program Agreement will set forth the requirements, responsibilities, default events and claw backs in the following areas:

- Maintenance of jobs over the benefit period;
- Inability to meet projected jobs and investment;
- Exemptions taken in excess of authorized amounts;
- Negative cost/benefit;
- Misrepresentation; and
- Such other requirements as DED deems necessary.

Annual Reports

Annual reports will be due January 31st each year after the initial refund for the previous calendar year.

Definitions

"Constructing taxpayer", if more than one taxpayer is responsible for a project, the taxpayer responsible for the construction of the facility, as opposed to the taxpayer responsible for the ongoing operations of the facility;

"County average wage", the average wages in each county as determined by the department for the most recently completed full calendar year. However, if the computed county average wage is above the statewide average wage, the statewide average wage shall be deemed the county average wage for such county for the purpose of determining eligibility;

"Operating taxpayer", if more than one taxpayer is responsible for a project, the taxpayer responsible for the ongoing operations of the facility, as opposed to the taxpayer responsible for the purchasing or construction of the facility;

"Project taxpayers", each constructing taxpayer and each operating taxpayer for a data storage center project;

"Taxpayer", the purchaser of tangible personal property or a service that is subject to state or local sales or use tax and from who state or local sales or use tax is owed. Taxpayer shall not mean the seller charged by law with collecting the sales tax from the purchaser.