ORANGE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY
County Government Center
Goshen, New York 10924

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John Steinberg, Assistant Secretary
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William Trimble, Executive Director
Joel Kleiman, Chief Financial Officer
Orange County Government Center
255 Main Street
Goshen, NY 10924
Phone: 845-291-2700 Fax: 845-291-2724
Philip A. Crotty, Attorney

December 20, 2006

Orange County Choppers Realty, LLC
10 Factory Street
Montgomery, New York 12549

Re: Orange County Industrial Development Agency and Orange County Choppers Realty, LLC - Sales Tax Exemption Letter

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on December 20, 2006, **the Orange County Industrial Development Agency** appointed **Orange County Choppers Realty, LLC** as its true and lawful agent to under undertake a certain project (the "Project") consisting of: (A) the acquisition by the Agency of title to, or a leasehold interest in, an approximately 3.23-acre parcel of vacant land located on Crossroads Court in the Town of Newburgh, Orange County, New York (the "Land"); (B) the construction on the Land of an approximately 70,000 square-foot steel, masonry and glass building to be used by the Company as its headquarters for the manufacture and sale of custom motorcycles and related motorcycle parts and other equipment, of which approximately 35,000 square feet will be used for manufacture and assembly, 25,000 square feet of which will be used for retail sales and showroom space, and approximately 10,000 square feet of which will be used as offices and a conference area (collectively, the "Improvements"); (C) the acquisition of and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment" and, collectively with Improvements, the "Facility").

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction and equipping and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including

installation costs), installed or placed in upon or under such building or facility, including all repairs and replacements of such property.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto. The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

In exercising this agency appointment, the Company, its agents, subagents, contractors and subcontractors should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you or your contractor should present to the supplier or other vendor of materials for the Facility, a completed "Contractor Exempt Purchase Certificate" (Form ST-120.1), checking box "(a)" and "(d)". You should give the supplier or vendor a copy of this letter to show that you (or the contractor) are acting as agent for the Agency in making the purchase. A copy of this letter retained by any vendor or seller may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York Tax Law §1132(c)(2), thereby relieving such vendor or seller from the obligation to collect sales and use tax with respect to the construction and installation and equipping of the Facility.

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent.

The agency created by this letter is limited to the Facility, and will expire on **October 31, 2007.** You may apply to extend this agency authority by showing good cause; *provided, however, the exemption for leases executed prior to said date shall continue through the term or*

extended term of said lease and any acquisition of said leased property. You may apply to extend this agency authority by showing good cause.

This letter is provided for the sole purpose of securing exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

Except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: William Trimble

William Trimble, Administrative Director

SCHEDULE A

LIST OF APPOINTED AGENTS[1]

1. _____

2. _____

3. _____

4. _____

[1] *FOR EACH AGENT APPOINTED BY THE COMPANY, A FORM ST-60 MUST BE COMPLETED AND FILED WITH NYS DEPARTMENT OF TAXATION AND FINANCE INDICATING SUCH AGENT OF THE COMPANY.*

New York State Department of Taxation and Finance

IDA Appointment of Project Operator or Agent

For Sales Tax Purposes

ST-60
(7/02)

The industrial development agency or authority (IDA) **must** submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

Name of IDA ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY	IDA project number (use OSC numbering system for projects after 1998) 3305 06 07A
Street address 255 MAIN STREET	Telephone number (845) 291-2700
City GOSHEN	State NY	ZIP code 10924
Name of IDA project operator or agent	Check box if directly appointed by the IDA: ☐	Employer identification or social security number
Street address	Telephone number ( )	Primary operator or agent? ☐ Yes ☒ No
City	State	ZIP code
Name of project ORANGE COUNTY CHOPPERS - NEW HEADQUARTERS	Purpose of project *(see instructions)* MANUFACTURING
Street address of project site CROSSROADS COURT	
City NEWBURGH	State NY	ZIP code

Description of goods and services intended to be exempted from sales and use taxes

GOODS AND SERVICES USED TO ACQUIRE, CONSTRUCT AND EQUIP AN APPROXIMATELY 70,000 SF STEEL, MASONRY AND GLASS BUILDING TO BE USED AS THE COMPANY'S NEW HEADQUARTERS FOR THE MANUFACTURE AND SALES OF CUSTOM MOTORCYCLES

	mm	dd	yyyy		mm	dd	yyyy
Date project operator or agent appointed	12	20	2006	Date project operator or agent status ends	10	31	2007 *

Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:

$6,000,000 of goods/services to be exempt (est. savings of $487,500 @ 8-1/8%) (all agents/all in) *Extended from 6/30/2007

Print name of officer or employee signing on behalf of the IDA WILLIAM E. TRIMBLE		Print title ADMINISTRATIVE DIRECTOR
Signature	Date 12/20/06	Telephone number (845) 291-2700

Instructions

Filing requirements

An IDA must file this form within 30 days of the date the IDA designates a project operator or appoints a person as agent of the IDA, for purposes of extending a sales and compensating use tax exemption.

The IDA must file a separate form for each project operator or agent appointed, whether directly or indirectly, and regardless of whether it is the primary operator or agent. If the IDA authorizes an operator or agent to appoint other agents, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the new agent's appointment. The IDA need not file this form for people hired to work on an IDA project who are not appointed as agents of the IDA. The IDA need not file this form if there are no sales or use tax exemption benefits authorized for a project as a result of the project's designation as an IDA project.

Purpose of project

For *Purpose of project*, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

Mailing instructions

Mail completed form to: **NYS Tax Department, IDA Unit, Building 8 Room 738, W A Harriman Campus, Albany NY 12227**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes 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 Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Telephone assistance is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.
Business tax information: 1 800 972-1233
Forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Fax-on-demand forms: 1 800 748-3676

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).

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

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 Contact Center, W A Harriman Campus, Albany NY 12227.

New York State
Department of
Taxation and Finance

ST-120.1
(10/05)

New York State and Local Sales and Use Tax

Contractor Exempt Purchase Certificate

To be used **only** by contractors who are registered with the Tax Department for sales tax purposes.

To vendors:
You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exemption certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

To contractors and vendors: read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

Name of vendor			Name of purchasing contractor		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code

1. I have been issued a New York State Certificate of Authority, _____ (enter your sales tax vendor identification number), to collect New York State and local sales and use tax, and this certificate has not expired or been suspended or revoked.

2. The tangible personal property or service being purchased will be used on the following project: acquisition, construction and equipping of an ~70K sq.ft. facility for use by the Company as its new headquarters located at Crossroads Court in the Town of Newburgh, Orange County, New York for and with the Orange County Industrial Development Agency pursuant to prime contract dated _____

3. These purchases are exempt from sales and use tax because:
*(Mark an **X** in the appropriate box; for further explanation, see items A through O in instructions.)*

☒ **A.** The tangible personal property is to be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under section 1116(a) of the Tax Law. (*For example, New York State government entities, United States governmental entities, United Nations and any international organization of which the United States is a member, certain posts or organizations of past or present members of the armed forces, and certain nonprofit organizations and Indian nations or tribes that have received New York State sales tax exempt organization status).* The tangible personal property will become an integral component part of such building, structure, or real property.

☒ **B.** The tangible personal property is production machinery and equipment, and it will be incorporated into real property.

☐ **C.** The tangible personal property will be used:
- in an Internet data center, or
- directly and predominantly in connection with telecommunications services for sale or Internet access services for sale, or
- directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs.

☐ **D.** The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation.

Note: This certificate is not valid unless the purchaser completes the certification on page 2.

☐ **E.** The tangible personal property will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.

☐ **F.** The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.

☐ **G.** The tangible personal property will be used to erect, add to, improve, repair, maintain, or service a building, structure, or real property owned by a qualified empire zone enterprise (QEZE), and will become an integral component part of such building, structure, or real property. (**Note:** Item G purchases are exempt from the New York State tax rate and from the 3/8% Metropolitan Commuter Transportation District (MCTD) rate. Item G purchases **may** be exempt from local taxes. See instructions.)

☐ **H.** The tangible personal property is residential solar energy systems equipment. (**Note:** Item H purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item H purchases may be exempt from local taxes. See instructions.)

☐ **I.** The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.

☐ **J.** The services are for the project described in line 2 above and will be resold. (This includes trash removal services in connection with repair services to real property.)

☐ **K.** The trash removal service being performed for the above project is in connection with a capital improvement to the real property of an organization exempt under section 1116(a) of the Tax Law.

☐ **L.** The services are to install, maintain, service, or repair tangible personal property used in an Internet data center, for telecommunication or Internet access services, or for radio or television broadcast production or transmission.

☐ **M.** The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.

☐ **N.** The services are to install residential solar energy systems equipment.

☐ **O.** The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan.*

Caution: Contractors may not use this certificate to purchase services exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

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 New York State 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.

Type or print name and title of owner, partner, etc. of purchasing contractor	
Signature of owner, partner, etc.	Date prepared

Substantial penalties will result from misuse of this certificate.

Instructions

Only a contractor who has a valid *Certificate of Authority* issued by the Tax Department may use this exemption certificate. The contractor must present a properly completed certificate to the vendor to purchase tangible personal property, or to a subcontractor to purchase services tax exempt. This certificate is not valid unless all entries have been completed.

The contractor may use this certificate to claim an exemption from sales or use tax on tangible personal property or services that will be used in the manner specified in items A through K below. The contractor may not use this certificate to purchase tangible personal property or services tax exempt on the basis that Form ST-124, *Certificate of Capital Improvement*, has been furnished by the project owner to the contractor. The contractor must use a separate Form ST-120.1, *Contractor Exempt Purchase Certificate*, for each project.

Purchase orders showing an exemption from the sales or use tax based on this certificate must contain the address of the project where the property will be used, as well as the name and address of the project owners (see page 1 of this form). Invoices and sales or delivery slips must also contain this information (name and address of the project for which the exempt purchases will be used or where the exempt services will be rendered, as shown on page 1 of this form).

Use of the certificate

This certificate may be used by a contractor to claim exemption from tax only on purchases of **tangible personal property** that is:

A. Incorporated into real property under the terms of a contract entered into with an exempt organization that has furnished the contractor with a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate,* governmental purchase order, or voucher.

B. Incorporated into real property and is production machinery or equipment for which the customer has given the contractor a copy of Form ST-121, *Exempt Use Certificate.*

C. Used in one of the following situations:

- Machinery, equipment, and other tangible personal property related to providing Web site services for sale to be installed in an Internet data center. (Examples of qualifying machinery, equipment, and tangible personal property include: computer system hardware, pre-written software, storage racks for computers, property relating to building systems designed for an Internet data center such as interior fiber optic and copper cable, property necessary to maintain the proper temperature and environment such as air filtration and air conditioning, property related to fire control, power generators, protective barriers, property that when installed will constitute raised flooring, and property related to providing security to the center.) The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting).*
- Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
- Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also includes machinery, equipment, and other tangible personal property used by a broadcaster directly and predominantly to transmit live or recorded programs. (Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)

D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.

E. Used predominantly (more than 50%) either in farm production or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate.* The exemption is allowed on tangible personal property whether or not the property is incorporated into a building or structure.

F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.

G. Incorporated into a building, structure, or real property located in the empire zone in which the qualified empire zone enterprise (QEZE) has qualified for tax benefits. The exemption is allowed on the New York State tax rate and on the ⅜% MCTD rate. The exemption does not apply to Municipal Assistance Corporation (MAC) taxes in New York City, or to county, city, or school district taxes, unless New York City or the county, city, or school district elects the exemption. In that case, purchases are exempt from the full, combined New York State and local tax rate. See Publication 718-Q, *Local Sales and Use Tax Rates on Sales to a Qualified Empire Zone Enterprise (QEZE),* for a listing of sales tax rates pertaining to the QEZE exemption. The customer must furnish the contractor a completed Form ST-121.6, *Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate.*

H. Residential solar energy systems equipment. *Residential solar energy systems equipment* means an arrangement of or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water, and/or electricity. The exemption is allowed on the New York State 4% tax rate and where applicable, the ⅜% MCTD rate. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. Note: No local exemption may be effective before December 1, 2005. The customer must furnish the contractor with a completed Form ST-121, *Exempt Use Certificate*, by completing the box marked *other.* For the definition of *residence* and for an exception relating to recreational equipment used for storage, as well as for other pertinent information, see TSB-M-05(11)S, *Sales and Use Tax Exemption for Residential Solar Energy Systems Equipment.*

I. Delivered and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property*

Purchased for Leased Commercial Office Space in Lower Manhattan, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased within the first year of the qualifying tenant's lease.

This certificate may also be used by a contractor to claim exemption from tax on the following **services:**

J. Installing tangible personal property, including production machinery and equipment, that does not become a part of the real property upon installation.

Repairing real property, when the services are for the project named on the front of this form and will be resold.

Trash removal services rendered in connection with repair services to real property, if the trash removal services will be resold.

Note: Purchases of services for resale can occur between prime contractors and subcontractors or between two subcontractors. The retail seller of the services, generally the prime contractor, must charge and collect tax on the contract price, unless the project owner gives the retail seller of the service a properly completed exemption certificate.

K. Trash removal services purchased by a contractor and rendered in connection with a capital improvement to an exempt organization's property.

L. Installing, maintaining, servicing, or repairing tangible personal property used for Web hosting, telecommunication or Internet access services, or by a broadcaster (described in C on page 3).

M. Installing, maintaining, servicing, or repairing tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both (described in E on page 3).

N. Installing residential solar energy systems equipment (described in H on page 3).

O. Installing tangible personal property delivered to and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located.

To the purchaser

Warning for misuse of this form

Any person who intentionally issues a false exemption certificate to evade sales and compensating use tax may be assessed for the tax evaded, and will be subject to a penalty of 100% of the tax due and a penalty of $50 for each such certificate issued. The purchaser will also be guilty of a misdemeanor punishable by a fine not to exceed $10,000 ($20,000 for a corporation). Other penalties may also apply.

In addition, your *Certificate of Authority*, allowing you to make certain tax-free purchases, may be revoked, prohibiting you from conducting any business in New York State for which a *Certificate of Authority* is required.

To the vendor

Do not accept this certificate unless all entries have been completed. The contractor must give you a properly completed exemption certificate **no later than 90 days after delivery** of the property or service; otherwise, the sale will be deemed to have been taxable at the time the transaction took place. When a certificate is received after the 90 days, both the seller (vendor) and contractor assume the burden of proving that the sale was exempt, and both may have to provide additional substantiation.

Your failure to collect sales or use tax, as a result of accepting an improperly completed exemption certificate or receiving the certificate more than 90 days after the sale, will make you personally liable for the tax plus any penalty and interest charges due.

You must keep this exemption certificate for at least three years after the due date of the last return to which it relates, or after the date when the return was 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.

Caution: You will be subject to additional penalties if you sell tangible personal property or services subject to tax, or purchase or sell tangible personal property for resale, without possessing a valid *Certificate of Authority*. In addition to the criminal penalties imposed under the New York State Tax Law, you will be subject to a penalty of up to $500 for the first day on which such a sale or purchase is made, plus up to $200 for each subsequent day on which such a sale or purchase is made, up to the maximum allowed.

Need help?

Internet access: *www.nystax.gov* (for information, forms, and publications)

Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Business Tax Information Center: 1 800 972-1233

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

Hotline for the hearing and speech impaired: If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

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 1 800 972-1233.

New York State Department of Taxation and Finance

Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

ST-340
(7/02)

For Period Ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator	Federal employer identification number (FEIN)
Street address	Telephone number ( )
City State ZIP code	
Name of IDA agent/project operator's authorized representative, if any	Title
Street address	Telephone number ( )
City State ZIP code	
Name of IDA	
Street address	
City State ZIP code	
Name of project	
Street address of project site	
City State ZIP code	

1 Project purpose:
- ☐ Services
- ☐ Construction
- ☐ Agriculture, forestry, fishing
- ☐ Wholesale trade
- ☐ Retail trade
- ☐ Finance, insurance or real estate
- ☐ Transportation, communication, electric, gas, or sanitary services
- ☐ Manufacturing
- ☐ Other *(specify)*_____

2 Date project began: ____/____/____ (MM DD YYYY)

3 Beginning date of construction or installation (actual or expected): ____/____/____ (MM DD YYYY)

4 Completion date of construction phase of project (actual or expected): ____/____/____ (MM DD YYYY)

5 Completion date of project (actual or expected): ____/____/____ (MM DD YYYY)

6 Duration of project (years/months; actual or expected): ____/____ (Years Months)

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases)	7	$

Print name of officer, employee, or authorized representative signing for the IDA agent/project operator	Title of person signing
Signature	Date

Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.

Mail completed report to: **NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.**

Instructions

General information

Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What must be reported?

The report must show the **total value of all state and local sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the **total combined** exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator

Enter the name, address, federal employer identification number (FEIN), and telephone number of the IDA agent/project operator.

Name of IDA agent/project operator's authorized representative

Enter the name, address, title (for example, attorney or accountant), and telephone number of the individual authorized by the IDA agent/project operator to submit this report.

Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

Line instructions

Line 1 — Project purpose — Check the box that identifies the purpose of the project. If you check *Other,* please be specific in identifying its purpose.

Line 2 — Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Line 3 — Enter the date on which you, or your general contractor or subcontractor, actually began, or expect to begin, construction or installation on the project. If the project does not involve any construction, enter ***Does not apply.***

Line 4 — Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

Line 5 — Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

Line 6 — Enter the total number of years and months from the project's inception to its completion or expected completion.

Line 7 — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases on line 7.

Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: **NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.**

Need help?

Telephone assistance is available from 8 a.m. to 5:55 p.m. (eastern time), Monday through Friday.
Business tax information: 1 800 972-1233
Forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-6800
Fax-on-demand forms: 1 800 748-3676

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).

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

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 Contact Center, W A Harriman Campus, Albany NY 12227.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes 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 Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

ORANGE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY
County Government Center
Goshen, New York 10924

David S. MacFarland, Chairman
Robert Armistead, Vice Chairman
Henry P. VanLeeuwen, Treasurer
Daniel F. Coleman, Assistant Treasurer
Stephen Brescia, Secretary
John Steinberg, Assistant Secretary
James Petro, Jr., Member

William Trimble
Administrative Director
Orange County Government Center
255 Main Street
Goshen, NY 10924
Phone: 845-291-2700 Fax: 845-291-2724
Philip A. Crotty, Attorney

FILE COPY

December 20, 2006

Orange County Choppers, Inc.
10 Factory Street
Montgomery, New York 12549

Re: Orange County Industrial Development Agency and Orange County Choppers Realty, LLC - Sales Tax Exemption Letter

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on December 20, 2006, **the Orange County Industrial Development Agency** appointed **Orange County Choppers Realty, LLC** as its true and lawful agent to under undertake a certain project (the "Project") consisting of: (A) the acquisition by the Agency of title to, or a leasehold interest in, an approximately 3.23-acre parcel of vacant land located on Crossroads Court in the Town of Newburgh, Orange County, New York (the "Land"); (B) the construction on the Land of an approximately 70,000 square-foot steel, masonry and glass building to be used by the Company as its headquarters for the manufacture and sale of custom motorcycles and related motorcycle parts and other equipment, of which approximately 35,000 square feet will be used for manufacture and assembly, 25,000 square feet of which will be used for retail sales and showroom space, and approximately 10,000 square feet of which will be used as offices and a conference area (collectively, the "Improvements"); (C) the acquisition of and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment" and, collectively with Improvements, the "Facility").

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction and equipping and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including

installation costs), installed or placed in upon or under such building or facility, including all repairs and replacements of such property.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto. The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (Form ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

In exercising this agency appointment, the Company, its agents, subagents, contractors and subcontractors should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you or your contractor should present to the supplier or other vendor of materials for the Facility, a completed "Contractor Exempt Purchase Certificate" (Form ST-120.1), checking box "(a)" and "(d)". You should give the supplier or vendor a copy of this letter to show that you (or the contractor) are acting as agent for the Agency in making the purchase. A copy of this letter retained by any vendor or seller may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York Tax Law §1132(c)(2), thereby relieving such vendor or seller from the obligation to collect sales and use tax with respect to the construction and installation and equipping of the Facility.

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the agency we have conferred on you with respect to this project. The penalty for failure to file such statement is the removal of your authority to act as our agent.

The agency created by this letter is limited to the Facility, and will expire on **June 30, 2007.** You may apply to extend this agency authority by showing good cause; *provided, however, the exemption for leases executed prior to said date shall continue through the term or*

extended term of said lease and any acquisition of said leased property. You may apply to extend this agency authority by showing good cause.

This letter is provided for the sole purpose of securing exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

Except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
William Trimble, Administrative Director

SCHEDULE A

LIST OF APPOINTED AGENTS[1]

1. _____

2. _____

3. _____

4. _____

[1] *FOR EACH AGENT APPOINTED BY THE COMPANY, A FORM ST-60 MUST BE COMPLETED AND FILED WITH NYS DEPARTMENT OF TAXATION AND FINANCING INDICATING SUCH AGENT OF THE COMPANY.*

New York State Department of Taxation and Finance

IDA Appointment of Project Operator or Agent

For Sales Tax Purposes

ST-60
(7/02)

The industrial development agency or authority (IDA) **must** submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

Name of IDA ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY	IDA project number (use OSC numbering system for projects after 1998) 3305 06 07A
Street address 255 MAIN STREET	Telephone number (845) 291-2700
City: GOSHEN / State: NY	ZIP code: 10924
Name of IDA project operator or agent / Check box if directly appointed by the IDA: ☐	Employer identification or social security number 20-5642282
Street address	Telephone number ( ) / Primary operator or agent? ☐ Yes ☒ No
City / State	ZIP code
Name of project ORANGE COUNTY CHOPPERS - NEW HEADQUARTERS	Purpose of project *(see instructions)* MANUFACTURING
Street address of project site CROSSROADS COURT	
City: NEWBURGH / State: NY	ZIP code

Description of goods and services intended to be exempted from sales and use taxes

GOODS AND SERVICES USED TO ACQUIRE, CONSTRUCT AND EQUIP AN APPROXIMATELY 70,000 SF STEEL, MASONRY AND GLASS BUILDING TO BE USED AS THE COMPANY'S NEW HEADQUARTERS FOR THE MANUFACTURE AND SALES OF CUSTOM MOTORCYCLES

	mm	dd	yyyy		mm	dd	yyyy
Date project operator or agent appointed	12	20	2006	Date project operator or agent status ends	06	30	2007

Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project: Approx.

~~$6,000,000 of Goods/Services to be exempt (Est. Savings of $487,500 at 8 1/8%) (All Agents/~~

Print name of officer or employee signing on behalf of the IDA WILLIAM E. TRIMBLE	Print title ADMINISTRATIVE DIRECTOR All In)	
Signature	Date 12/20/06	Telephone number (845) 291-2700

Instructions

Filing requirements

An IDA must file this form within 30 days of the date the IDA designates a project operator or appoints a person as agent of the IDA, for purposes of extending a sales and compensating use tax exemption.

The IDA must file a separate form for each project operator or agent appointed, whether directly or indirectly, and regardless of whether it is the primary operator or agent. If the IDA authorizes an operator or agent to appoint other agents, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the new agent's appointment. The IDA need not file this form for people hired to work on an IDA project who are not appointed as agents of the IDA. The IDA need not file this form if there are no sales or use tax exemption benefits authorized for a project as a result of the project's designation as an IDA project.

Purpose of project

For *Purpose of project*, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

Mailing instructions

Mail completed form to: **NYS Tax Department, IDA Unit, Building 8 Room 738, W A Harriman Campus, Albany NY 12227**

Privacy notification

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This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

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

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

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

New York State
Department of
Taxation and Finance

ST-120.1
(10/05)

New York State and Local Sales and Use Tax

Contractor Exempt Purchase Certificate

To be used **only** by contractors who are registered with the Tax Department for sales tax purposes.

To vendors:
You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exemption certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

To contractors and vendors: read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

Name of vendor			Name of purchasing contractor		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code

1. I have been issued a New York State Certificate of Authority, _____ (enter your sales tax vendor identification number), to collect New York State and local sales and use tax, and this certificate has not expired or been suspended or revoked.

2. The tangible personal property or service being purchased will be used on the following project: acquisition, construction and equipping of an ~70K sq.ft. facility for use by the Company as its new headquarters located at Crossroads Court in the Town of Newburgh, Orange County, New York for and with the Orange County Industrial Development Agency pursuant to prime contract dated _____

3. These purchases are exempt from sales and use tax because:
*(Mark an **X** in the appropriate box; for further explanation, see items A through O in instructions.)*

☒ **A.** The tangible personal property is to be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under section 1116(a) of the Tax Law. (*For example, New York State government entities, United States governmental entities, United Nations and any international organization of which the United States is a member, certain posts or organizations of past or present members of the armed forces, and certain nonprofit organizations and Indian nations or tribes that have received New York State sales tax exempt organization status).* The tangible personal property will become an integral component part of such building, structure, or real property.

☒ **B.** The tangible personal property is production machinery and equipment, and it will be incorporated into real property.

☐ **C.** The tangible personal property will be used:
- in an Internet data center, or
- directly and predominantly in connection with telecommunications services for sale or Internet access services for sale, or
- directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs.

☐ **D.** The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation.

Note: This certificate is not valid unless the purchaser completes the certification on page 2.

☐ **E.** The tangible personal property will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.

☐ **F.** The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.

☐ **G.** The tangible personal property will be used to erect, add to, improve, repair, maintain, or service a building, structure, or real property owned by a qualified empire zone enterprise (QEZE), and will become an integral component part of such building, structure, or real property. (**Note:** Item G purchases are exempt from the New York State tax rate and from the 3/8% Metropolitan Commuter Transportation District (MCTD) rate. Item G purchases **may** be exempt from local taxes. See instructions.)

☐ **H.** The tangible personal property is residential solar energy systems equipment. (**Note:** Item H purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item H purchases may be exempt from local taxes. See instructions.)

☐ **I.** The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.

☐ **J.** The services are for the project described in line 2 above and will be resold. (This includes trash removal services in connection with repair services to real property.)

☐ **K.** The trash removal service being performed for the above project is in connection with a capital improvement to the real property of an organization exempt under section 1116(a) of the Tax Law.

☐ **L.** The services are to install, maintain, service, or repair tangible personal property used in an Internet data center, for telecommunication or Internet access services, or for radio or television broadcast production or transmission.

☐ **M.** The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.

☐ **N.** The services are to install residential solar energy systems equipment.

☐ **O.** The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan.*

Caution: Contractors may not use this certificate to purchase services exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

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 New York State 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.

Type or print name and title of owner, partner, etc. of purchasing contractor	
Signature of owner, partner, etc.	Date prepared

Substantial penalties will result from misuse of this certificate.

Instructions

Only a contractor who has a valid *Certificate of Authority* issued by the Tax Department may use this exemption certificate. The contractor must present a properly completed certificate to the vendor to purchase tangible personal property, or to a subcontractor to purchase services tax exempt. This certificate is not valid unless all entries have been completed.

The contractor may use this certificate to claim an exemption from sales or use tax on tangible personal property or services that will be used in the manner specified in items A through K below. The contractor may not use this certificate to purchase tangible personal property or services tax exempt on the basis that Form ST-124, *Certificate of Capital Improvement*, has been furnished by the project owner to the contractor. The contractor must use a separate Form ST-120.1, *Contractor Exempt Purchase Certificate*, for each project.

Purchase orders showing an exemption from the sales or use tax based on this certificate must contain the address of the project where the property will be used, as well as the name and address of the project owners (see page 1 of this form). Invoices and sales or delivery slips must also contain this information (name and address of the project for which the exempt purchases will be used or where the exempt services will be rendered, as shown on page 1 of this form).

Use of the certificate

This certificate may be used by a contractor to claim exemption from tax only on purchases of **tangible personal property** that is:

A. Incorporated into real property under the terms of a contract entered into with an exempt organization that has furnished the contractor with a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate,* governmental purchase order, or voucher.

B. Incorporated into real property and is production machinery or equipment for which the customer has given the contractor a copy of Form ST-121, *Exempt Use Certificate.*

C. Used in one of the following situations:

- Machinery, equipment, and other tangible personal property related to providing Web site services for sale to be installed in an Internet data center. (Examples of qualifying machinery, equipment, and tangible personal property include: computer system hardware, pre-written software, storage racks for computers, property relating to building systems designed for an Internet data center such as interior fiber optic and copper cable, property necessary to maintain the proper temperature and environment such as air filtration and air conditioning, property related to fire control, power generators, protective barriers, property that when installed will constitute raised flooring, and property related to providing security to the center.) The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting).*
- Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
- Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also includes machinery, equipment, and other tangible personal property used by a broadcaster directly and predominantly to transmit live or recorded programs. (Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)

D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.

E. Used predominantly (more than 50%) either in farm production or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate.* The exemption is allowed on tangible personal property whether or not the property is incorporated into a building or structure.

F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.

G. Incorporated into a building, structure, or real property located in the empire zone in which the qualified empire zone enterprise (QEZE) has qualified for tax benefits. The exemption is allowed on the New York State tax rate and on the ⅜% MCTD rate. The exemption does not apply to Municipal Assistance Corporation (MAC) taxes in New York City, or to county, city, or school district taxes, unless New York City or the county, city, or school district elects the exemption. In that case, purchases are exempt from the full, combined New York State and local tax rate. See Publication 718-Q, *Local Sales and Use Tax Rates on Sales to a Qualified Empire Zone Enterprise (QEZE),* for a listing of sales tax rates pertaining to the QEZE exemption. The customer must furnish the contractor a completed Form ST-121.6, *Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate.*

H. Residential solar energy systems equipment. *Residential solar energy systems equipment* means an arrangement of or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water, and/or electricity. The exemption is allowed on the New York State 4% tax rate and where applicable, the ⅜% MCTD rate. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. Note: No local exemption may be effective before December 1, 2005. The customer must furnish the contractor with a completed Form ST-121, *Exempt Use Certificate*, by completing the box marked *other.* For the definition of *residence* and for an exception relating to recreational equipment used for storage, as well as for other pertinent information, see TSB-M-05(11)S, *Sales and Use Tax Exemption for Residential Solar Energy Systems Equipment.*

I. Delivered and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property*

Purchased for Leased Commercial Office Space in Lower Manhattan, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased within the first year of the qualifying tenant's lease.

This certificate may also be used by a contractor to claim exemption from tax on the following **services:**

J. Installing tangible personal property, including production machinery and equipment, that does not become a part of the real property upon installation.

Repairing real property, when the services are for the project named on the front of this form and will be resold.

Trash removal services rendered in connection with repair services to real property, if the trash removal services will be resold.

Note: Purchases of services for resale can occur between prime contractors and subcontractors or between two subcontractors. The retail seller of the services, generally the prime contractor, must charge and collect tax on the contract price, unless the project owner gives the retail seller of the service a properly completed exemption certificate.

K. Trash removal services purchased by a contractor and rendered in connection with a capital improvement to an exempt organization's property.

L. Installing, maintaining, servicing, or repairing tangible personal property used for Web hosting, telecommunication or Internet access services, or by a broadcaster (described in C on page 3).

M. Installing, maintaining, servicing, or repairing tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both (described in E on page 3).

N. Installing residential solar energy systems equipment (described in H on page 3).

O. Installing tangible personal property delivered to and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located.

To the purchaser

Warning for misuse of this form

Any person who intentionally issues a false exemption certificate to evade sales and compensating use tax may be assessed for the tax evaded, and will be subject to a penalty of 100% of the tax due and a penalty of $50 for each such certificate issued. The purchaser will also be guilty of a misdemeanor punishable by a fine not to exceed $10,000 ($20,000 for a corporation). Other penalties may also apply.

In addition, your *Certificate of Authority*, allowing you to make certain tax-free purchases, may be revoked, prohibiting you from conducting any business in New York State for which a *Certificate of Authority* is required.

To the vendor

Do not accept this certificate unless all entries have been completed. The contractor must give you a properly completed exemption certificate **no later than 90 days after delivery** of the property or service; otherwise, the sale will be deemed to have been taxable at the time the transaction took place. When a certificate is received after the 90 days, both the seller (vendor) and contractor assume the burden of proving that the sale was exempt, and both may have to provide additional substantiation.

Your failure to collect sales or use tax, as a result of accepting an improperly completed exemption certificate or receiving the certificate more than 90 days after the sale, will make you personally liable for the tax plus any penalty and interest charges due.

You must keep this exemption certificate for at least three years after the due date of the last return to which it relates, or after the date when the return was 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.

Caution: You will be subject to additional penalties if you sell tangible personal property or services subject to tax, or purchase or sell tangible personal property for resale, without possessing a valid *Certificate of Authority*. In addition to the criminal penalties imposed under the New York State Tax Law, you will be subject to a penalty of up to $500 for the first day on which such a sale or purchase is made, plus up to $200 for each subsequent day on which such a sale or purchase is made, up to the maximum allowed.

Need help?

Internet access: *www.nystax.gov* (for information, forms, and publications)

Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Business Tax Information Center: 1 800 972-1233

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

Hotline for the hearing and speech impaired: If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

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 1 800 972-1233.

New York State Department of Taxation and Finance

Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

ST-340
(7/02)

For Period Ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator | Federal employer identification number (FEIN)

Street address | Telephone number ( )

City | State | ZIP code

Name of IDA agent/project operator's authorized representative, if any | Title

Street address | Telephone number ( )

City | State | ZIP code

Name of IDA

Street address

City | State | ZIP code

Name of project

Street address of project site

City | State | ZIP code

1 Project purpose:
- ☐ Services
- ☐ Construction
- ☐ Agriculture, forestry, fishing
- ☐ Wholesale trade
- ☐ Retail trade
- ☐ Finance, insurance or real estate
- ☐ Transportation, communication, electric, gas, or sanitary services
- ☐ Manufacturing
- ☐ Other *(specify)*_____

2 Date project began: _____/_____/_____ (MM DD YYYY)

3 Beginning date of construction or installation (actual or expected): _____/_____/_____ (MM DD YYYY)

4 Completion date of construction phase of project (actual or expected): _____/_____/_____ (MM DD YYYY)

5 Completion date of project (actual or expected): _____/_____/_____ (MM DD YYYY)

6 Duration of project (years/months; actual or expected): _____/_____ (Years Months)

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) ..... 7 $

Print name of officer, employee, or authorized representative signing for the IDA agent/project operator | Title of person signing

Signature | Date

Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.

Mail completed report to: **NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.**

Instructions

General information

Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What must be reported?

The report must show the **total value of all state and local sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the **total combined** exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator

Enter the name, address, federal employer identification number (FEIN), and telephone number of the IDA agent/project operator.

Name of IDA agent/project operator's authorized representative

Enter the name, address, title (for example, attorney or accountant), and telephone number of the individual authorized by the IDA agent/project operator to submit this report.

Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

Line instructions

Line 1 — Project purpose — Check the box that identifies the purpose of the project. If you check *Other,* please be specific in identifying its purpose.

Line 2 — Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Line 3 — Enter the date on which you, or your general contractor or subcontractor, actually began, or expect to begin, construction or installation on the project. If the project does not involve any construction, enter ***Does not apply.***

Line 4 — Enter the date the construction phase of the project was completed. If it has not been completed by the end of the reporting period, enter the date you expect to complete this phase of the project.

Line 5 — Enter the date on which installation, lease, or rental of property (for example, machinery or computers) on the project ended. If the project was not completed by the end of the reporting period, enter the date the project is expected to be completed.

Line 6 — Enter the total number of years and months from the project's inception to its completion or expected completion.

Line 7 — Enter the total amount of New York State and local sales and compensating use taxes exempted during the reporting period (if none, enter "0") as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases on line 7.

Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: **NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.**

Need help?

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Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8 a.m. to 5:55 p.m., eastern time).

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

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 Contact Center, W A Harriman Campus, Albany NY 12227.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes 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 Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.