

Sales and Use Tax Exemption For Machinery and Equipment Used in a Marine Terminal Facility Located in New York City

On August 16, 2005, Governor George E. Pataki signed into law Chapter 508 of the Laws of 2005. Chapter 508 amended Section 1115(a) of the Tax Law to provide a new exemption from the 4% New York State sales and compensating use tax for the purchase or use of certain machinery and equipment that is used at qualified marine terminal facilities located in New York City. This new exemption is effective December 1, 2005, and applies to the purchase or use of machinery and equipment that is used directly and predominantly in loading, unloading and handling cargo at marine terminal facilities located in New York City which handled more than 350,000 twenty foot equivalent units (TEU's) in the year 2003. For purposes of this exemption, the term *TEU* means a unit of volume equivalent to the volume of a twenty-foot container. The exemption also applies to the 3/8% sales and use taxes for the Metropolitan Commuter Transportation District (MCTD) imposed by section 1109 of the Tax Law.

This new exemption does not apply to the 4% local sales and use taxes imposed by section 1107 of the Tax Law within New York City. New York City sales tax collected by the vendor must be reported on the *New York City-local tax only* line of the sales tax return. Machinery and equipment which qualifies for the new exemption and which is delivered to the purchaser outside of New York City is exempt from state and local sales and use taxes in that other jurisdiction. However, when the purchaser brings the machinery or equipment into New York City for use at the qualified marine terminal, the purchaser would owe the 4% New York City compensating use tax.

A contractor making a purchase qualifying for the exemption should use Form ST-120.1, *Contractor Exempt Purchase Certificate*, to claim this exemption. A person other than a contractor making a purchase qualifying for the exemption should use Form ST-121, *Exempt Use Certificate*, to claim this exemption. Persons using Form ST-121 to claim this exemption who are not required to have a *Certificate of Authority* are not required to list a *Certificate of Authority* number on Form ST-121. Where a vendor has accepted in good faith a properly completed exemption certificate within 90 days after the delivery of the machinery or equipment to the purchaser, the vendor will be relieved of the responsibility of collecting tax from the purchaser and the burden of proving that the purchase is not subject to tax will be solely upon the purchaser.

(See Tax Law sections 1107(b)(10) and 1115(a)(41).)