

**Sales and Use Tax Exemptions on Certain Purchases of Tangible Personal
Property and Services for Leased Commercial
Office Space in Lower Manhattan**

Governor George E. Pataki recently signed into law Chapter 2 of the Laws of 2005 which provides tax-related incentives for businesses to locate or relocate their offices and employees in lower Manhattan. Included in Chapter 2 are exemptions from New York State and local sales and compensating use taxes for certain purchases of tangible personal property and services related to leased commercial office space in lower Manhattan.

The purpose of this memorandum is to explain these new exemptions from sales and use taxes, which went into effect September 1, 2005, and apply to new space leases (as opposed to ground leases) of 10 years or more commencing on or after such date. Certain provisions of the new sales tax exemptions differ based on the location of the leased premises in two specific eligible areas. The first area, described here as Eligible Area A, consists of a broad area of lower Manhattan below City Hall, as specifically delineated below. The second area, described here as Eligible Area B, consists of the World Trade Center site, the World Financial Center, and the Battery Park City area, more specifically described below. The exemptions provided for in Eligible Area B are broader in scope and longer in duration than those provided for in Eligible Area A. Accordingly, for leased commercial office space located within both Eligible Area A and Eligible Area B, the broader exemptions granted in Eligible Area B apply.

The exemptions apply to the state and local sales and use taxes imposed in New York City, including the additional tax imposed by the state within the Metropolitan Commuter Transportation District (MCTD). The exemptions do not apply to sales and use taxes imposed by other counties or cities in the state.

Eligible areas

Eligible Area A

Eligible Area A is the area in Manhattan bounded by Murray Street on the north starting at the intersection of West Street and Murray Street; running easterly along the center line of Murray Street, connecting through City Hall Park with the center line of Frankfort Street and running easterly along the center lines of Frankfort and Dover Streets to the intersection of Dover Street and South Street; running southerly along the center line of South Street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State Street and running northwesterly along the center line of State Street to the intersection of State Street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West Street; and running northerly along the center line of West Street to the intersection of West Street and Murray Street. In addition, Eligible Area A includes the Battery Park project area described under Eligible Area B, including the World Financial Center. Any real property tax lot that is partly located inside Eligible Area A is deemed to be entirely located inside Eligible Area A.

Eligible Area B

Eligible Area B means the World Trade Center site, the World Financial Center, and the Battery Park City area.

For purposes of these exemptions, *World Trade Center site* means the area of the former complex of seven buildings (known as numbers *one (1)* through *seven (7)* *World Trade Center*) around a central plaza, that were destroyed or damaged beyond repair in the attacks of September 11, 2001.

World Financial Center means the complex of buildings known as numbers *one (1)* through *four (4)* *World Financial Center*, in the area bordered by West Street, the Hudson River, and Vesey and Liberty Streets.

Battery Park City area means the Battery Park project area as defined in section 1972 of the Public Authorities' Law, including the World Financial Center. The *Battery Park project area* is defined in the Public Authorities Law as that portion of New York City generally bounded by the easterly line of West Street, the northerly line of lot number 10 in block 130 as shown on the tax maps of the City of New York, borough of Manhattan, and its extensions easterly to West Street and westerly to the United States pierhead line as now constituted, the said United States pierhead line, the lands of Battery Park, and the southerly line of Battery Place.

Exemptions

Exemptions for Eligible Area A

Subject to the qualifications indicated below, the following property and services are exempt from New York State and New York City local sales and use taxes along with the additional tax imposed by the state within the MCTD:

1. Tangible personal property purchased by a tenant for use directly and exclusively to furnish and equip the tenant's leased premises for use as commercial office space within Eligible Area A, but only if the tangible personal property becomes an integral component part of the building in which the leased premises are located;
2. Tangible personal property purchased by a tenant or landlord for use directly and exclusively in adding to, altering, or improving the tenant's leased premises for use as commercial office space within Eligible Area A, but only if the tangible personal property becomes an integral component part of the building in which the leased premises are located;
3. Tangible personal property sold to a contractor, subcontractor or repairperson for use directly and exclusively in adding to, altering, or improving a tenant's leased premises for use as commercial office space within Eligible Area A, but only if the tangible personal property becomes an integral component part of the building in which the leased premises are located; and
4. The service of installing tangible personal property that is exempt as described in number 1 or 2 above.

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The exemptions for Eligible Area A apply only for a new space lease with a landlord for a term of 10 years or more commencing on or after September 1, 2005, but not later than **September 1, 2009**. Premises that are the subject of a pre-existing lease are not eligible for these exemptions unless the pre-existing lease expires by its terms prior to September 1, 2009, and the tenant enters into a new lease of 10 years or more which commences no later than **September 1, 2009**.

The exemptions apply only to purchases or sales of tangible personal property made and uses occurring, **during the first year** of the tenant's lease. The property must be delivered to the leased premises for use there, and any services must be rendered there in full, within 90 days after the end of the first year of the lease. For leased and rented tangible personal property, the exemptions apply only to lease or rental payments required to be paid during the first year of the lease.

The exemptions in Eligible Area A expire on December 1, 2010.

Exemptions for Eligible Area B

Subject to the qualifications indicated below, the following property and service are exempt from New York State and New York City local sales and use taxes along with the additional tax imposed by the state within the MCTD:

1. Tangible personal property purchased by a tenant for use directly and exclusively to furnish and equip the tenant's leased premises for use as commercial office space within Eligible Area B. This exemption is the same as the exemption for Area A except the tangible personal property is **not** required to become an integral component part of the building in which the leased premises are located. Therefore, items such as desks, chairs and computer equipment used to furnish and equip the commercial office space may qualify for the exemption from sales tax within Area B. This exemption does not include purchases on items such as office supplies (e.g. paper, pens, ink cartridges and toner).
2. Tangible personal property purchased by a tenant or landlord for use directly and exclusively in adding to, altering, or improving the tenant's leased premises for use as commercial office space within Eligible Area B. This exemption is also the same as the exemption granted for within Area A except the tangible personal property is **not** required to become an integral component part of the building in which the leased premises are located.
3. Tangible personal property sold to a contractor, subcontractor, or repairperson for use directly and exclusively in adding to, altering, or improving a tenant's leased premises for use as commercial office space within Eligible Area B, but only if the tangible personal property becomes an integral component part of the building in which the leased premises are located; and
4. The service of installing tangible personal property that is exempt as described in number 1 or 2 above.

The exemptions for Eligible Area B apply only for a new space lease with a landlord for a term of 10 years or more commencing on or after September 1, 2005, but not later than **September 1, 2011**. Premises that are the subject of a tenant's pre-existing lease are not eligible for these exemptions unless

the pre-existing lease expires by its terms prior to September 1, 2011, and the tenant enters into a new lease of 10 years or more which commences no later than **September 1, 2011**.

The exemptions apply only to purchases or sales of tangible personal property made and uses occurring, **during the first year** of the tenant's lease. The property must be delivered to the leased premises for use there, and any services must be rendered there in full, within 90 days after the end of the first year of the lease. For leased and rented tangible personal property, the exemptions apply only to lease or rental payments required to be paid during the first year of the lease.

The exemptions in Eligible Area B expire on December 1, 2012.

Definitions

The term *leased premises* means the premises within a building to be used as commercial office space under a lease described above, excluding any common areas and any other area outside such office space.

The term *landlord* means the person, unrelated by ownership to a tenant, who leases premises to that tenant. A landlord will generally be considered to be unrelated by ownership if the landlord and tenant are not related persons under the ownership rules of section 465(b)(3)(C) of the Internal Revenue Code. For example, under these rules, persons are related if there is 10% common ownership of stock of a corporation or capital or profits of a partnership.

Procedures

To make a purchase of tangible personal property or installation service exempt from sales and use taxes, the tenant or landlord must issue a completed Form ST-121, *Exempt Use Certificate*, using Part III, Box T, to the vendor at the time of purchase. For purposes of these exemptions, tenants or landlords who are not otherwise required to be registered for sales tax purposes and therefore do not have a Certificate of Authority are not required to list a Certificate of Authority number on Form ST-121.

To be granted this exemption, contractors making qualifying purchases of tangible personal property or installation service must submit to the vendor a properly completed Form ST-120.1 *Contractor's Exempt Purchase Certificate*.

These new exemptions went into effect September 1, 2005. A person who did not receive an exemption for a qualifying purchase at the time of the sale may be eligible for a credit or refund of the tax paid. The credit or refund of sales or use tax paid may be claimed by filing Form AU-11, *Application for Credit or Refund of Sales or Use Tax*. The claim must be accompanied by the appropriate documentation as explained in the instructions for the form, and must generally be filed within three years after the date when the tax was required to be paid to the Tax Department. Where an AU-11 has been filed and a credit has been claimed by a person required to file sales tax returns, the applicant may take such credit on the return that is due coincident with or immediately subsequent to the time that the applicant files the application for credit.