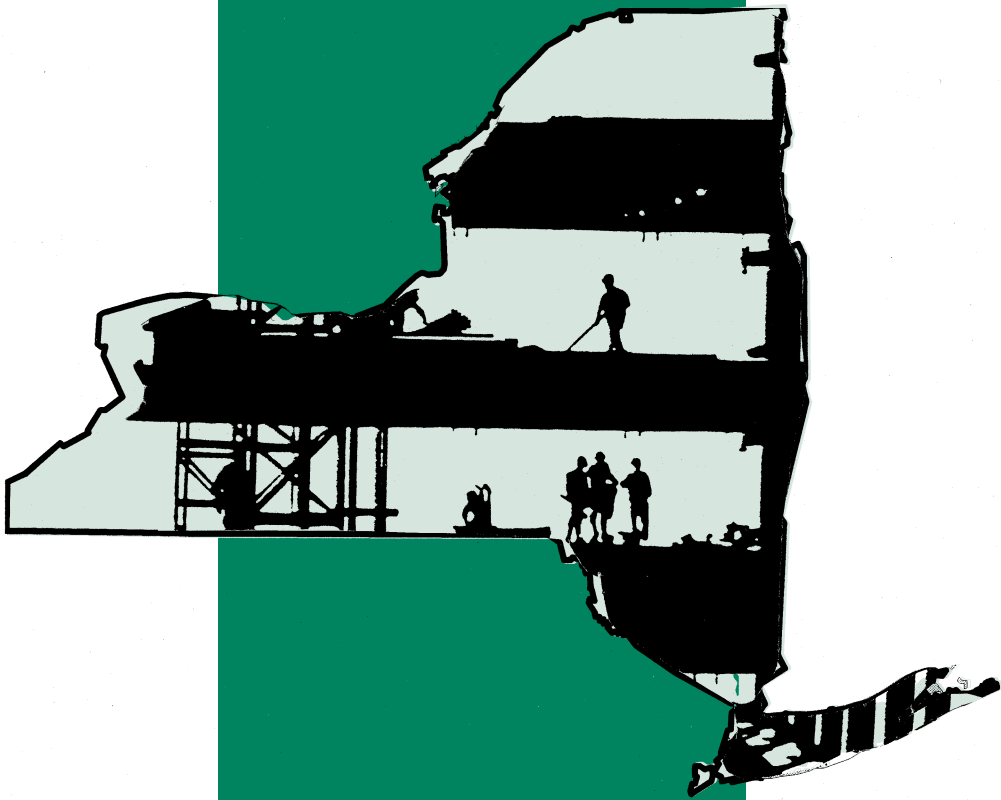


A GUIDE  
TO  
SALES AND  
USE TAX  
INCENTIVES  
WITHIN  
EMPIRE  
ZONES



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Dear New York Businessperson:

Since 1995, one of my top priorities has been to help create jobs and opportunities for all New Yorkers by cutting taxes and regulations. In 2000, I signed legislation that transformed the existing Economic Development Zones program into a significantly improved business attraction tool, the New York State Empire Zones program. During its first year, this program has been extremely successful, sparking new investment across the State by creating virtual “tax free” zones for businesses that create new jobs in these areas.

The new Empire Zones program will enable communities in designated areas to offer new and existing businesses additional benefits including credits for real property taxes paid, sales tax exemptions on the purchase of tangible personal property and services used by the business and a tax credit for business and personal income taxes paid. Currently, there are 52 Empire Zones across the State, with six more to be created later this year.

In addition, the incentives offered under the previous program have been extended to the new Empire Zones program. These include wage tax, investment tax, employment incentive and capital credits, as well as additional benefits for new businesses.

I encourage you to use the information in this guide to determine the most effective way to take advantage of the Business, Personal Income, and Sales Tax Benefits offered by the Empire Zones program.

Very truly yours,

George E. Pataki  
Governor

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## Introduction

This publication discusses the refund or credit of certain state and local sales and use taxes paid on purchases of building materials used to construct, expand, or rehabilitate qualifying property located in Empire Zones in New York State.

Chapter 63 of the Laws of 2000 made changes to the Economic Development Zones Program. Effective May 15, 2000, the term “Economic Development Zone” was changed to “Empire Zone.” Throughout this publication, the term Empire Zone is used.

In recent years, Empire Zones (EZs) have been created in various cities, counties, towns, and villages within New York State. A business located in an EZ may also be eligible for credits against its New York State personal income tax and various business franchise taxes — the taxes imposed under Articles 9-A, 22, 32, and 33 of the Tax Law. (For information on how the credit provisions apply to taxpayers under Articles 9-A, 22, 32 and 33, refer to Publication 26, *A Guide to Business Tax and Personal Income Tax Incentives Within Empire Zones.*)

This publication covers the sales tax refund or credit that is available to a contractor performing certain building activities within an Empire Zone for tax years beginning on or after January 1, 1994. For definitions of certain terms used throughout this publication, refer to *Glossary of terms* on pages 16 and 17. For assistance, see *Need help?* on the back cover.

Chapter 63 of the Laws of 2000 also created Qualified Empire Zone Enterprises. A Qualified Empire Zone Enterprise is a business enterprise that becomes a certified Empire Zone business prior to July 1, 2005 that annually meets an employment test. A Qualified Empire Zone Enterprise is entitled to an exemption from sales and use taxes, available under Articles 28 and 29 of the Tax Law. The Qualified Empire Zone Enterprise will be discussed in a separate Technical Services Bureau Memorandum issued by the Department.

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## Sales tax incentives in an Empire Zone

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*A credit or refund is available for all or a portion of the sales or use tax paid on building materials that are incorporated into a qualifying commercial or industrial structure being constructed, expanded, or rehabilitated within an EZ*

The sales tax incentive available in an Empire Zone (EZ) is a credit or refund of the sales or use tax paid on building materials that are incorporated into a qualifying commercial or industrial structure that is being constructed, expanded, or rehabilitated within the zone.

Section 1119(a)(6) of the Tax Law provides that a refund or credit is available for the New York State portion of the sales or use tax paid on those materials that are physically incorporated into the structure that is being constructed, expanded, or rehabilitated. The local taxing authority within which the zone is located may also provide a similar refund or credit for the local sales or use tax imposed on the sale or use of such tangible personal property within the zone.

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### To qualify for the refund or credit of sales tax paid, certain criteria must be met

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*The building materials on which the sales or use tax was paid must be physically incorporated into real property located in an Empire Zone*

To qualify for the refund or credit of sales tax paid on building materials used in construction within an Empire Zone, certain criteria must be met.

**First**, the building materials must be physically incorporated into real property located in an EZ. This means that a refund or credit is allowed only for the sales or use tax paid on those building materials that become an integral component part of the structure.

*Example 1.* A contractor purchases lumber to construct a temporary protective pedestrian walkway at a site where a building is being constructed in an empire zone. After construction is completed, the temporary walkway will be dismantled and removed. Thus, the lumber is not physically incorporated into the building that is being rehabilitated.

*Example 2.* A contractor is hired to restore the exterior walls of a building that is being rehabilitated in an Empire Zone. As part of the job, the contractor purchases steel pipe and wood planking to construct the tubular scaffolding that is used to assist the workers in accessing the exterior walls of the building during the rehabilitation. Upon completion of the work on the building exterior, the temporary pipe framing is dismantled and removed. The tubular scaffolding is not physically incorporated into the structure being rehabilitated.

*Example 3.* A contractor is hired to install a sound and light system in a building located in an Empire Zone. The building is undergoing expansion. The sound and light system consists of a public address

system, speakers, amplifiers, and overhead lighting, all of which are wired into the physical structure. The sound and light system is considered to be physically incorporated into the structure.

*The real property must be classified as industrial or commercial real property*

**Second**, the real property on which the construction is performed must be classified as industrial or commercial real property. Commercial real property is any income producing real property, other than residential real property. Commercial real property includes hotels (nonresidential), restaurants, nightclubs, beauty salons, travel agencies, movie theaters, banks, automobile repair shops, clothing stores, food stores, office buildings, and so forth.

Industrial real property is real property that is used primarily for the manufacturing, processing, generating, assembling, refining, mining, or extracting of goods. Industrial real property includes factories, manufacturing plants and facilities, refineries, assembly plants, and so forth.

*Constructing, expanding, or rehabilitating residential real property does not qualify*

Constructing, expanding, or rehabilitating residential real property does not qualify. For these purposes, residential real property is real property that consists of a building or structure containing one or more dwelling units that are used or to be used as the permanent home or residence of one or more persons. Residential real property includes apartment hotels, apartment buildings, apartment houses, condominiums, cooperative housing, townhouses, private homes, and facilities that contain multiple dwellings (such as two- and three-family homes).

*Example 4.* A building in an area designated as an EZ contains six residential rental apartments. The building does not qualify for purposes of the EZ refund or credit.

*Example 5.* A complex is being constructed in an area designated as an EZ. The complex will consist of residential condominiums, cooperatives, and apartment buildings with sports facilities for the residents. The complex does not qualify for purposes of the EZ refund or credit.

*Example 6.* A residential hotel is in an area designated as an EZ. The hotel is not qualifying real property for purposes of the EZ credit.

*The completed construction must result in either the construction of new industrial or commercial real property, or the rehabilitation or expansion of existing industrial or commercial real property*

**Third**, the completed construction must result in either the construction of new industrial or commercial real property, or the rehabilitation or expansion of existing industrial or commercial real property.

The term *construction* means the act of building a new structure. For example, erecting a building on a vacant lot, or razing an old structure and erecting a new structure in its place are examples of constructing.

The term *expansion* means the addition of entire rooms or floors to existing buildings to increase the available space. Adding another floor to a building by raising the building's roof and installing supporting walls is an example of expansion.

The term *rehabilitation* means performing activities necessary to restore real property to an acceptable condition of fitness and safety for habitation, as required by all applicable governmental building codes, laws, and regulations. The replacement or repair of heating, plumbing, and electrical systems to bring them up to code is an example of rehabilitation.

*Example 7.* A closed self-service laundry is reopened, and all building code violations are corrected. This is qualifying rehabilitation work.

*Activities that fall under the categories of construction, expansion, and rehabilitation*

Among the activities that constitute construction, expansion, and rehabilitation are:

- cutting away of any wall, floor, or roof construction, or any portion thereof;
- the removal, cutting, or modification of any beams or structural supports;
- the removal, change, or closing of any required means of egress;
- the rearrangement, or relocation of any parts of the building affecting loading or exit requirements;
- the rearrangement or relocation of any parts of the building affecting light, heat, ventilation, or elevator requirements;
- additions to, alterations of, or rearrangement, relocation or removal of any standpipe or sprinkler piping, water distribution piping, house sewer, private sewer, or drainage system, including leaders, or any soil, waste, or vent pipe, or any gas distribution system; and
- any other work affecting health or the fire or structural safety of a building.

*General maintenance, renovations, repairs, and similar activities are not eligible activities*

The terms construction, expansion, and rehabilitation do not include renovations, general maintenance, or minor repairs. Examples are replacing through-the-wall mounted air conditioning units, replacing damaged bricks, repairing or replacing faucets, patching and painting walls, sanding and shellacking floors, repairing or replacing door frames, repairing or replacing electrical switches and wiring, removal of debris, replacing missing roof tiles, replacing toilet seals and seats, repairing termite damage, repairing dry rot and replacing window frames and panes.

*Real property that is used exclusively, or is intended to be used exclusively, by one or more vendors whose primary business is the retail sale of tangible personal property is not qualifying property*

**Fourth**, the real property cannot be used exclusively, or be intended for use exclusively, by one or more vendors whose primary business is the retail sale of tangible personal property. For example, property that is constructed exclusively as retail space, such as a shopping mall, is not qualifying property. Thus, even though property may qualify as industrial or commercial real property, its exclusive use by retailers disqualifies the property for purposes of the EZ refund or credit.

*Example 8.* A strip mall in an area designated as an EZ houses a retail video store, a drug store, a convenience food store, and a small department store. The mall is not qualifying commercial real property for purposes of the EZ refund or credit because it is used exclusively to house shops and stores that engage primarily in retail sales of tangible personal property.

*Example 9.* A developer constructs a mall in an area designated as an Empire Zone. The mall is intended to house 10 retail clothing stores, three retail shoe stores, and two retail toy stores. The mall is not qualifying commercial property for purposes of the EZ refund or credit.

***Property that is used by retail and non-retail businesses (mixed-use property) is qualifying property***

For purposes of the EZ refund or credit, *exclusively* means 100% of the real property is used or is intended to be used in the retail sale of tangible personal property by one or more vendors. Thus, if a building is constructed, expanded, or rehabilitated in an EZ, and the building is going to be used partly as retail space and partly as commercial or industrial space, the credit or refund is allowed on the total tax paid on the building materials used in constructing, expanding, or rehabilitating the entire building.

*Example 10.* A building is being constructed in an area located in a qualifying EZ. Once completed, the building will house a brewery and a beer pub. The building is qualifying industrial property for purposes of the EZ refund or credit.

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## **Eligible purchases**

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***The credit or refund is available only for those taxes paid on tangible personal property (building materials, fixtures, plumbing and heating components, and so forth) that is incorporated into the real property being constructed, expanded, or rehabilitated, and that becomes an integral component part of that real property***

A refund or credit can be claimed only for sales or use taxes paid on tangible personal property purchased for use in constructing, expanding, or rehabilitating qualifying industrial or commercial real property located in an area designated as an EZ, but only if the tangible personal property becomes an integral component part of the real property being constructed, expanded, or rehabilitated.

*Example 11.* A contractor is hired to rehabilitate a building located in an area designated as an EZ. The building is qualifying property for purposes of the EZ refund or credit. The contractor purchases bricks, cement, lighting fixtures, and a new heating system. The bricks and cement are used to rehabilitate the existing structure. The lighting fixtures and heating system are installed as permanent fixtures in the rehabilitated building. The contractor can claim a refund or credit for the New York State sales tax paid on the purchases of brick, cement, lighting fixtures, and the heating system since these materials became a component part of the structure being rehabilitated.

*Example 12.* The facts are the same as in *Example 11*. The contractor also purchased lumber that was used for scaffolding. The contractor may not claim a refund or credit for the sales tax paid on the purchase of the lumber because the lumber was not incorporated into the real property.

*Example 13.* The facts are the same as in *Example 11*. The contractor purchases electric drills, saws, ladders, and other tools and equipment for use in the construction work. No EZ credit or refund is allowed for the sales tax paid on the purchase of the tools and ladders since they are building supplies that are not incorporated into the real property.

*Example 14.* Concrete is purchased and used to patch a badly damaged floor in an old factory building that is being completely rehabilitated. The building is in an area designated as an EZ. The purchaser is eligible for the EZ credit or refund of the New York State sales tax paid on the purchase of the concrete.

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## Refund or credit of state and local sales and use taxes

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### *New York State*

A refund or credit can be claimed for the New York State sales or use tax paid on tangible personal property purchased for use in constructing, expanding, or rehabilitating qualifying industrial or commercial real property located in an area designated as an EZ, but only if the tangible personal property becomes an integral component part of the real property being constructed, expanded, or rehabilitated. The refund or credit does not apply to the additional ¼% sales and use taxes imposed within the Metropolitan Commuter Transportation District (MCTD). The MCTD consists of New York City (Bronx, Kings, New York, Queens, and Richmond counties), and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.

*Example 15.* A contractor purchases building materials that are used to rehabilitate qualifying industrial real property located in an area designated as an EZ. The materials were purchased and used in a county that is part of the MCTD, and the contractor paid 8¼% sales tax on the purchase. The contractor can claim a refund or credit for the 4% New York State sales tax paid, and for the 4% local tax paid if the locality has an EZ credit or refund. The additional ¼% tax imposed within the MCTD is not eligible for refund or credit.

### *New York City*

The refund or credit of the sales and use taxes does not apply to the **local** taxes imposed on purchases of tangible personal property made within New York City.

*Example 16.* A contractor purchases building materials in New York City. The materials are used in constructing a building in New York City in an area designated as an EZ. The contractor paid 8¼% sales tax on the purchase. The contractor can claim a credit or refund of the 4% New York State sales tax paid on the purchase. The 4% local tax imposed within New York City and the ¼% additional state tax imposed within the MCTD are not eligible for refund or credit.

***Other cities and counties***

A credit or refund of local sales and use tax is available only if the locality (city or county) has enacted legislation to provide the refund or credit. If a locality has enacted the necessary legislation, a credit or refund can be claimed for the local sales or use tax (in addition to the allowable credit for the New York State sales or use tax) paid on tangible personal property purchased for use in constructing, expanding, or rehabilitating qualifying industrial or commercial real property located in an area designated as an EZ.

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**Who can claim the refund or credit**


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***The person who is eligible to claim the refund or credit is the person who has the liability, under the Tax Law, for the payment of the sales tax***

The person who is eligible to claim a refund or credit for sales tax paid on the purchase of qualifying tangible personal property (building materials, fixtures, plumbing components, heating components, and so forth) used in constructing, expanding, or rehabilitating real property in an Empire Zone is the person who, under the Tax Law, has the liability for payment of the sales tax due on the purchase of the tangible personal property.

***Jobs that result in capital improvements to the real property***

When the construction, expansion, or rehabilitation results in a capital improvement, and the property owner or tenant purchases the tangible personal property and performs the labor, the property owner or tenant is liable for the sales tax, that must be paid to the supplier at the time the tangible personal property is purchased. In this situation, then, the property owner or tenant is the person who is eligible to file for a refund or credit of the sales tax paid on the purchase of that tangible personal property which becomes an integral component part of the real property. The same is true if the property owner or tenant purchases the tangible personal property and hires a contractor to perform the labor.

If the property owner or tenant hires a contractor, and the contractor purchases the tangible personal property, then the contractor is liable for the sales tax, which must be paid to the supplier at the time the tangible personal property is purchased. In this situation, the contractor is the person who is eligible to file for a refund or credit of the sales tax paid on the purchase of that tangible personal property that becomes an integral component part of the real property.

A capital improvement is any addition or alteration to real property that meets all three of the following conditions: ① it substantially adds to the value of the real property or appreciably prolongs the useful life of the real property; and ② it becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the real property or to the property that was affixed to the real property; and ③ it is intended to become a permanent installation.

**Publication 30 (2/01)**

***Construction, expansion, or rehabilitation jobs that do not result in a capital improvement to the real property***

When a building is being constructed, expanded, or rehabilitated, and the construction, expansion, or rehabilitation does not result in a capital improvement to the real property, if the property owner or tenant purchases the tangible personal property and performs the labor, the property owner or tenant is liable for the sales tax due on the purchase of the tangible personal property. In this situation, the property owner or tenant is the person eligible to file for a refund or credit of the sales tax paid on the purchase of that tangible personal property that becomes an integral component part of the real property. This is also true in cases where the property owner or tenant purchases the materials and hires a contractor to perform the labor.

***Incidental repairs***

Repairs that are incidental to a general construction plan that results in an overall capital improvement to, or rehabilitation of, the real property are treated as part of the capital improvement or rehabilitation. If the construction does not result in a capital improvement to, or rehabilitation of, the real property, but merely in repair or maintenance of the real property, no refund or credit is allowed on any portion of the sales tax paid on the repair service.

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**How to claim the refund or credit**

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***Form AU-11, Application for Credit or Refund, must be used to claim a credit or refund of sales tax paid on qualifying building materials***

Use Form AU-11, *Application for Credit or Refund*, to claim a credit or refund of sales tax paid on qualifying building materials. The claim must be accompanied by the following supporting documentation:

***The claim must be accompanied by the appropriate supporting documentation***

| a copy of the certification issued by the local EZ coordinator to the business occupying the building or, in the alternative, a letter issued by the local EZ coordinator to the property owner verifying that the property on which the services were performed is located in a qualifying Empire Zone;

| a statement from the owner of the property certifying to the property's qualifying use as industrial or commercial real property, and certifying that the property will not be used exclusively by businesses primarily engaged in retail sales of tangible personal property;

| a copy of the purchase invoices, or, if the invoices are numerous, a schedule of the purchase invoice(s) for the building materials that shows the supplier's name, item or product purchased, total amount of purchase, and the amount of sales tax paid; (note: vendors must maintain a copy of all purchase orders to present as verification of their claim; the purchase orders must show the name of the purchaser and the amount of sales tax paid on the purchase); and

| a copy of the construction contract that shows the location of the property that was constructed, expanded, or rehabilitated.

Form AU-11 and supporting documentation must be submitted to the address shown on Form AU-11.

***If the person claiming the refund or credit is a registered vendor, the person may chose to claim a credit on such contractor's sales and use tax return***

Taxpayers who are registered as vendors for sales tax purposes, and who wish to claim a credit for the sales taxes paid on building materials incorporated into a qualifying building in an EZ may do so on their sales tax return (Form ST-100, ST-810, ST-102 or ST-101) for sales taxes paid on building materials. Form AU-11, *Application for Credit or Refund*, must also be completed and mailed, separately, to the address shown on Form AU-11. The application must indicate that the credit has been claimed on a sales tax return and the period covered by that return. Supporting documentation must be filed with Form AU-11.

*Example 17.* A contractor is hired to expand a qualifying building in a designated EZ area. The contractor purchases \$50,000 of building materials, all of which will be incorporated in the addition to the qualifying building. Once incorporated, the materials will become an integral component part of the qualifying building. The contractor may claim a credit on the sales tax return filed for the period during which the building materials were used in constructing the addition to the qualifying property located in the EZ. The contractor must complete Form AU-11, *Application for Credit or Refund*, indicating that the credit is being claimed for building materials used in expanding a qualifying building located in an EZ.

***Even if the person chooses to claim the credit on a sales tax return, Form AU-11 must still be completed and submitted with the supporting documentation***

The contractor must attach a copy of the certification issued by the local EZ coordinator to the business occupying the building (or, in the alternative, a letter issued to the building's owner by the local EZ coordinator verifying that the property on which the services were performed is located in a qualifying Empire Zone). The contractor must also attach to Form AU-11:

- | a statement from the building owner certifying that the property is qualifying industrial or commercial real property and is not used exclusively by businesses engaged primarily in the retail sale of tangible personal property;

- | the purchase invoices, or, if the invoices are numerous, a schedule of the purchase invoice(s) showing the supplier's name, item or product purchased, total amount of purchase, and the amount of sales tax paid; and

- | a copy of the construction contract that shows the location of the property that was serviced.

The contractor must enter the amount of the credit in Column K of the sales tax return filed for the period in which the services were performed. Form AU-11 and supporting documentation should be sent to the address shown on Form AU-11.

***Refund or credit of sales or use tax paid for property used in a different locality***

***When building materials are purchased in one locality and used in a different locality, a use tax is owed to the locality in which the use occurs***

***A credit or refund can be claimed for the taxes paid to the locality in which the materials were purchased***

When a taxpayer purchases building materials in one locality and uses those materials in a different locality (whether it be for an EZ project or some other construction project), the taxpayer owes a use tax, based on the cost of the materials, to the jurisdiction where the materials are used. The taxpayer can claim a credit or refund of the taxes paid in the locality where the materials were purchased.

*Example 18.* A contractor purchases building materials in the city of Albany, New York, which is located in Albany County. The contractor uses the building materials in the renovation of a building located in Dutchess County. The contractor paid 8% sales tax (4% New York State, 4% Albany County) when the materials were purchased. The contractor may claim a credit for the 4% Albany County sales tax paid on the purchase because the building materials are used outside Albany County. The contractor owes a local use tax of 3% and the ¼% additional state tax imposed within the Metropolitan Commuter Transportation District (MCTD) because the building materials are used in Dutchess County. Assume the contractor files quarterly sales and use tax returns. The transaction should be reported on Columns C, D, and F of the contractor’s ST-100 as follows:

Taxing Jurisdiction	Taxable Sales and Services	Purchases Subject to Use tax	% Rate	Sales and Use Taxes (C+D) x E		Code
Albany County	(5,000)		8	(400	00)*	0179
Dutchess County		5,000	7¼	362	50	1303

***How to show the transactions on a sales and use tax return***

\* The amounts for Albany County should be shown in parentheses to indicate that there is a credit for these amounts applicable in this jurisdiction. The contractor must attach a statement to the return. The statement must give the reason for claiming a credit on the Albany County line. In this example, the \$5,000 purchase shown as a credit on the Albany County line represents the cost of building materials that were used to construct a building in another taxing jurisdiction, Dutchess County. The contractor should also indicate in the statement that the \$5,000 is reported on the Dutchess County line as purchases subject to use tax.

The contractor must also attach any supporting documentation to the return. The supporting documentation must include a schedule of invoices showing the name of the purchaser and the amount of sales tax paid. (Remember that the contractor is required to retain copies of the actual invoices or other sales document received from the supplier. This documentation must be made available for examination by the Tax Department upon request.) The contractor should also attach documentation showing the location in which the materials were used, such as a copy of the contract between the contractor and the owner of the real property on which the services were performed.

The full amount of the credit claimed on the Albany County line, \$400, must be entered in Column F on page 2 of the ST-100.

*Note:* the full amount of the purchase and the full amount of tax paid on that purchase is to be credited on the Albany County line. Likewise, the full amount of the purchase and the full amount of use tax due on that purchase is to be reported on the Dutchess County line.

***Claiming an EZ refund or credit***

If the taxpayer is claiming an EZ refund or credit, in addition to the steps outlined above, the taxpayer must also complete Form AU-11, *Application for Credit or Refund*. If the taxpayer is claiming a credit for the tax paid, the amount of credit computed on Form AU-11 must be entered in Column K of the taxpayer's sales tax return.

*Example 19.* Assume the same facts as in *Example 18*. Also assume that the contractor wants to file for an EZ refund. The contractor must complete Form AU-11, *Application for Credit or Refund*, attach the required documentation, and mail the form and attachments to the address shown on Form AU-11.

*Example 20.* Assume the same facts as in *Example 18*. Also assume that the contractor wants to file for an EZ credit. The contractor must complete Form AU-11 and transfer the amount of the credit from Form AU-11 to Column K of the sales tax return. Form AU-11 and supporting documentation must be mailed separately to the address shown on Form AU-11.

## Glossary of terms

### **Commercial real property**

Any income producing real property other than residential real property. Commercial real property includes property occupied by office buildings, hotels, motels, restaurants, nightclubs, taverns, bar and grills, beer pubs, beauty salons, barber shops, travel agencies, movie theaters, banks, automobile repair shops, clothing stores, food stores, and so forth.

### **Commercial space**

Any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging, or distribution of tangible personal property; and any space that is used or occupied, or is intended, arranged, or designed to be used or occupied as a separate business or professional unit or office in any building, structure or portion thereof.

### **Constructing**

The building of new industrial or commercial structures on vacant or predominantly vacant land, or the rehabilitation or expansion of an existing commercial structure where such rehabilitation or expansion is not physically or functionally integrated with the existing structure, or where the rehabilitation or expansion results in additional usable square footage.

### **Expanding**

The act or process of increasing in extent, size, number, volume or scope. The addition of entire rooms or floors to existing buildings to increase the available space is an example of expansion. Adding another floor to a building by raising the building's roof and installing supporting walls is another example of expansion.

### **Industrial real property**

Real property that is used primarily for the manufacturing, processing, generating, assembling, refining, mining or extracting of goods. Industrial real property includes manufacturing facilities, factories, refineries, assembly plants, and like facilities.

### **Qualifying property**

Industrial or commercial real property located in an area that has been designated as an Empire Zone. However, real property that is used, or will be used, exclusively by one or more businesses primarily engaged in retail sales of tangible personal property is not qualifying property.

**Reconstruction**

The modernization, rehabilitation, expansion, or other improvement of an existing commercial or industrial structure where the total proposed project cost is in an amount equal to at least 20% of the assessed value of the property at the time an application for a certification of eligibility is made, and where such modernization, rehabilitation, expansion, or other improvement is physically and functionally integrated with the existing structure and does not create additional usable square footage greater than 50% of the usable square footage of the existing structure except in a case where the existing structure has been substantially destroyed by fire or other casualty.

**Rehabilitation**

Bringing property into compliance with all applicable laws and regulations including, but not limited to, the installation, replacement, or repair of heating, plumbing, electrical and related systems, and the elimination of all hazardous and immediately hazardous violations in the structure in accordance with state and local laws and regulations of state and local agencies. Completely modifying a previously uninhabitable building to make it habitable is an example of rehabilitation. The term rehabilitation does not include renovations, general maintenance, or minor repairs. For example, patching and painting walls in a building, sanding and shellacking the floors, and replacing the rotten wood in the window sills are considered renovations, not rehabilitation.

**Residential real property**

Property, other than property used for hotel purposes, consisting of a building or structure containing one or more dwelling units used or to be used for residential purposes. Residential real property includes condominiums, cooperatives, houses, apartment buildings, etc.

**Residential purposes**

The term residential purposes means that the property is used as the home or residence of one or more persons.

**Retail sale**

A sale for final consumption as opposed to a sale for further sale or processing. Thus, a retail sale is a sale to the ultimate consumer.

**Retail space**

Any space in a building, structure, or portion thereof that is used or occupied, or is intended, arranged, or designed to be used or occupied, for the retail sale, resale, displaying, storing, handling, garaging, or distribution of tangible personal property.

## NEED HELP?



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

For business tax information and forms, call the New York State Business Tax

Information Center at: 1 800 972-1233

For general information, call toll free: 1 800 225-5829

To order forms and publications, call toll free: 1 800 462-8100

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



**Fax-on-Demand Forms** -- Forms are available 24 hours a day, 7 days a week 1 800 748-3676



**Internet Access** - [www.tax.state.ny.us](http://www.tax.state.ny.us)



### **Hotline for the Hearing and Speech Impaired -**

1 800 634-2110 from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. If you do not own a telecommunications device for the deaf (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 1 800 225-5829.



### **Mailing Address** - If you need to write, address your letter

to: NYS TAX DEPARTMENT  
TAXPAYER ASSISTANCE BUREAU  
W A HARRIMAN CAMPUS  
ALBANY NY 12227