

Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

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New York State Sales and Use Tax Update

Dear Construction Clients and Friends,

On October 23, 2014, the New York State Department of Taxation and Finance (DTF) issued a Technical Memorandum, outlining a new policy regarding the sales & use taxes application to temporary scaffolding, temporary pedestrian walkways (sidewalk bridges), and temporary hoisting systems installed at construction sites. The new policy will be effective January 1, 2015.

New York State imposes sales tax on every retail sale of tangible personal property, other than sales for resale and sales of some specific services. Thus, a contractor's receipts from the sale of installing tangible personal property, or receipts from the sale of maintaining, servicing, or repairing real property, are subject to sales tax. However, sales tax is not imposed on services for the installation or construction of a capital improvement to real property. A capital improvement is defined as "an addition or alteration to real property" that:

- Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;
- Becomes a part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or the article itself; and
- Is intended to become a permanent installation.

Under the new policy, the DTF will extend the exemption to include receipts from the installation of materials and the labor of certain temporary facilities provided at construction sites, such as a sidewalk bridge or scaffolding, where such temporary facilities are a necessary prerequisite to the construction of the capital improvement. Accordingly, scaffolding services will be exempt from sales tax if the end result of the underlying construction project qualifies as a capital improvement, and is supported by a valid Form ST-124, "Certificate of Capital Improvement." TSB-M-14(15)S states that not only are the installation charges for scaffolding used in connection with capital improvements exempt from sales tax, but the periodic rental charges and the dismantling charges are also exempt from sales tax regardless of whether these charges are invoiced on a lump sum or separately stated basis.

For more information regarding this new policy, please contact your Anchin Relationship Partner or Phillip Ross, Practice Leader of Anchin's Construction Industry Group at 212.840.3456.

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