

**Sales and Use Tax Exemption for Utilities and Utility Services  
Produced by Cogeneration Facilities Operated by Cooperative Corporations**

On November 30, 2005, Governor George E. Pataki signed into law Chapter 758 of the Laws of 2005. Chapter 758 amended section 1115(a) of the Tax Law to provide a new exemption from New York State and local sales and compensating use tax for the sale of electricity, steam, and refrigeration (utilities), and electric, steam and refrigeration services (utility services) that are produced or generated by cogeneration facilities owned or operated by cooperative corporations under certain conditions.

This exemption is effective March 1, 2006, and applies to the sale of utilities and utility services provided that the utilities and utility services are:

- (1) metered;
- (2) generated or produced by a *cogeneration facility*, as defined below, owned or operated by a *cooperative corporation* containing at least 1,500 apartments; and
- (3) distributed to tenants and/or occupants (residential or commercial) of a *cooperative corporation*.

For purposes of this exemption, a *cogeneration facility* means a facility that produces electric energy and steam or other forms of useful energy (such as heat) that are used for industrial, commercial, or residential heating or cooling purposes and that is supplied to and used by tenants and/or occupants of a *cooperative corporation*.

The exemption only applies to sales of utilities and utility services produced by a *cogeneration facility* that was in operation before January 1, 2004. However, the exemption will continue to apply if the *cooperative corporation* replaces the *cogeneration facility* that was in operation before January 1, 2004, with another *cogeneration facility*.

The term *cooperative corporation* means a corporation organized under the laws of New York where some of the stockholders are entitled, due to their ownership interest of stock in the corporation, to occupy for dwelling purposes an apartment in a building owned by the corporation pursuant to a lease or occupancy agreement with the corporation.

Chapter 758 also provides that fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service used or consumed in the production of the utilities and utility services that are exempt, as described above, are not entitled to the exemption for utilities and utility services used or consumed directly and exclusively in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, as provided in section 1115(c)(1) of the Tax Law. For example, if a *cooperative corporation* purchases fuel to operate a *cogeneration facility* that produces the utilities or services that are exempt as described above,

the purchase of the fuel by the *cooperative corporation* to operate the facility is subject to state and local sales and use tax.

In addition, based on section 1115(a)(12) of the Tax Law, machinery or equipment purchased by a *cooperative corporation* for use or consumption directly and predominantly in the production for sale of the exempt utilities and utility services described in this memorandum may be purchased exempt from New York State and local sales and compensating use taxes.