New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-M-10(6)S
Sales Tax
June 30, 2010

Expiration of Refund or Credit for Sales Tax Paid on Building Materials Incorporated into Qualifying Real Property Located in an Empire Zone

Chapter 57 of the Laws of 2009 provided that all Empire Zone designations expire on June 30, 2010 (See TSB-M-09(5)C, (4)I, *Legislative Changes to the Empire Zone Program*). With the expiration of the Empire Zones designations, the sales tax refund or credit on certain building materials used in an Empire Zone under Tax Law section 1119(a)(6) is discontinued.

Section 1119(a)(6) of the Tax Law allows a refund or credit for the state portion of sales and use taxes paid on building materials used in the construction, expansion, or rehabilitation of qualifying real property located in an Empire Zone. In addition, the local taxing authority within which the Empire Zone is located may also provide a similar refund or credit for the local sales and use tax paid under those circumstances. However, the refund or credit may only be claimed after the building materials are physically incorporated into the qualifying real property.

As a result of the expiration of the Empire Zone designations, it is the position of the Tax Department that the refund or credit of state sales tax, and if applicable, local sales tax, will be allowed only for those building materials that were purchased on or before June 30, 2010, and physically incorporated on or before August 31, 2010, into qualifying real property located in an Empire Zone. No refund or credit will be allowed for building materials physically incorporated into the real property after August 31, 2010, even if the materials were purchased or a building project was started before July 1, 2010.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.