

## Sales Tax Exclusion for the Service of Waste Removal from a Waste Transfer Station

On July 26, 2005, Governor George E. Pataki signed into law Chapter 321 of the Laws of 2005, which amended section 1105(c)(5) of the Tax Law. Section 1105(c)(5) imposes sales tax on the receipts from the sale of the services of maintaining, servicing, or repairing real property, property or land, including the service of trash or garbage removal.

The amendment excludes from state and local sales tax, receipts from the sale of the service of the removal of waste material from facilities regulated by the Department of Environmental Conservation (DEC) as either transfer stations or as construction and demolition debris processing facilities. This exclusion from sales tax does not apply to services for the removal of waste that is generated by the facilities.

Transfer stations and construction and demolition debris processing facilities are specific categories of solid waste management facilities subject to regulation and either permit or registration requirements under DEC regulations. Under the DEC regulations, a *transfer station* is defined generally as “a solid waste management facility other than a recyclables handling and recovery facility, used oil facility, or a construction and demolition debris processing facility, where solid waste is received for the purpose of subsequent transfer to another solid waste management facility for further processing, treating, transfer or disposal.” A *construction and demolition debris processing facility* is “a processing facility that receives and processes construction and demolition debris by any means.” These requirements are specifically addressed in Part 360 of the DEC regulations (6 NYCRR Part 360).

A waste transfer station or construction and demolition debris processing facility making a purchase that qualifies for the exclusion should submit a properly completed Form ST-121, *Exempt Use Certificate*, to the seller of the service to claim the exclusion. Persons using Form ST-121 to claim this exclusion who are not required to have a *Certificate of Authority* are not required to list a *Certificate of Authority* number on Form ST-121. Where a vendor has accepted in good faith a properly completed exemption certificate within 90 days of the performance of the service, the vendor will be relieved of the responsibility of collecting tax from the purchaser and the burden of proving that the purchase is not subject to tax will be solely upon the purchaser.

This exclusion applies to receipts from the sales of the eligible waste removal services where such services occur on or after December 1, 2005.