



# **Tax Law and Regulations Relating to Walkabouts By Tax Department Employees**

The Tax Department is required to provide every parking facility operator in Manhattan with:

- the rules for conducting parking facility walkabouts in Manhattan, and
- a copy of the law and regulations on walkabout observations.

An authorized employee of the Tax Department has the right to conduct a walkabout observation of any parking facility in Manhattan during the hours the facility is open for business. The Tax Department employee conducting the observation must announce their presence at the facility and display valid identification to the parking facility operator.

The walkabout will be conducted only in that portion of the facility where parking services are provided, and in a manner that will not unreasonably interfere with the operation of the parking facility.

The information obtained during the walkabout may be used to administer any tax, fee, penalty, or interest imposed on the parking facility operator under the Sales Tax Law.

The employee conducting the walkabout is not required to give advance notice of their intent to enter the premises to conduct the walkabout.

The following sections of the Tax Law and Regulations give Tax Department employees the authority to conduct walkabout observations of parking facilities in Manhattan to ensure compliance with the Sales Tax Law.

Tax Law **§ 1142-A(d)** provides: Upon the arrival of the commissioner, or any authorized employee of the department or agent of such commissioner or such department, at the premises of a person required to collect tax, described in subdivision (a) of this section, the announcing by such commissioner, agent or employee of his or her presence and the display of his or her identification to such person or to any officer or employee of such person, such commissioner, employee or agent may, during the hours that such premises are open for business, enter and walk about the portion of the premises in such a county where such person required to collect tax provides such service of parking, garaging or storing for motor vehicles. Such person and the officers and employees of such persons shall not interfere with the commissioner or such employee or agent when such commissioner, employee or agent enters and walks about such premises to observe or record the make, model and license plate number of any vehicle parked, entering, exiting or being operated within such premises, the length of time such vehicle is on such premises, the true motor vehicle capacity of the premises, and the series of tickets or other memoranda, and their numbers, being issued at the time of the observation or recording. Such entering and walking about and such observation and recording are to be performed only in connection with an examination of a return, report or schedule, or entry thereon, of such person required to be filed under or pursuant to articles twenty-eight and twenty-nine of this chapter or in connection with the liability of such person for tax required to be shown on such return, report or schedule, or during the consideration of the initiation of such an examination. Nothing in this section shall authorize or be construed to authorize a forced entry into the premises; a search of the premises, with or without a warrant; the entry into any vehicle or compartment or container thereof, whether locked or unlocked; the seizure of any person, property, books, records, documents or other matter or thing; or the use of any information obtained by such observation or recording in any civil or criminal proceeding. Provided, however, that: (1) any such information may be used to assess, determine, fix, collect, enforce or administer any tax, fee, penalty or interest imposed on the person required to collect tax, described in subdivision (a) of this section, under or pursuant to articles twenty-eight and twenty-nine of this chapter; and (2) may be used in the prosecution of any crime or offense related thereto pursuant to articles twenty-eight and twenty-nine of this chapter or the penal law where such information was obtained either as a result of the entry and walking about

of an area as to which the person required to collect the tax has no reasonable expectation of privacy or as a result of a lawful investigative procedure other than the entry and walking about authorized pursuant to this subdivision. Such entry and walking about shall be sought and made only during the hours that such premises are open for business. The commissioner of taxation and finance, such employee of the department and such agent of the commissioner or such department shall not be required to give notice to such person or such person's representative of an intent to enter the premises prior to the time that such commissioner, employee or agent arrives at such person's premises.

Sales Tax Regulations § 538.5 provides: Rights and Obligations of the Department of Taxation and Finance.

- (a) *Walkabout rules.* (1) The commissioner, any authorized employee of the department or the agent of such commissioner or department shall have the right to conduct a walkabout observation of a parking facility in the following manner and subject to the following provisions:
- (i) the walkabout must be conducted during the hours that the facility is open for business;
  - (ii) the person conducting the walkabout must announce his or her presence at the time of arrival at the facility; and
  - (iii) such person must display his or her valid identification as a employee or agent to the parking facility operator or officer or employee of such parking facility operator.
- (2) The commissioner, the department's authorized employee or the agent of either may:
- (i) enter and walk about that portion of the parking facility where any parking service is provided;
  - (ii) observe and record the make, model and license plate number of any vehicle parked, entering, exiting or being operated in or at the facility and the length of time such vehicle is in or at the facility;
  - (iii) determine the true capacity of the parking facility;
  - (iv) observe and record the series of tickets or other memoranda issued, as well as those found on the vehicles in or at the facility, their beginning and ending numbers (as required to be issued pursuant to Tax Law § 1142-A[b] and this Part) and such other information as is found on the tickets or other memoranda, at the time of such observation or recording.
- (3) The commissioner, authorized employee of the department or agent of either shall conduct such observation and recording in a manner that does not unreasonably interfere with the operation of the parking facility or the parking facility operator. When preparing to conduct a walkabout, such commissioner, employee or agent shall take into account a reasonable time period to arrive at the facility to conduct such observation and recording. For purposes of this section, *reasonable time period* shall mean the hours that the facility is open for business. The person conducting the walkabout shall not enter or remain at the facility except during the hours that the facility is open for business, unless the facility operator or its officer or employee gives permission to the person conducting the walkabout to enter or remain at the facility at other times.
- (b) Information obtained during the walkabout may only be used:
- (1) to assess, determine, fix, collect, enforce or administer any tax, fee, penalty or interest imposed on the parking facility operator under Tax Law Article 28 or pursuant to the authority of Article 29; and
  - (2) in the prosecution of any crime or offense related thereto under or pursuant to the authority of Tax Law Article 28 or 29 or the New York Penal Law where the information was obtained either as a result of a walkabout in an area where the parking facility operator had no reasonable expectation of privacy or as a result of a lawful investigative procedure other than the walkabout.

- (c)(1) The department shall furnish, on an annual basis, a copy of subdivision (d) of Tax Law § 1142-A, a copy of the regulation provisions adopted pursuant to such subdivision (d) and a written explanation of the power of the commissioner, the department's authorized employee or the agent of either to enter and walk about the parking facility and the limitations thereon, to each parking facility operator which registers or remains registered for purposes of Tax Law § 1142-A.
- (2) The department shall also prepare, have printed and distribute to each parking facility operator, a poster that provides notice that the facility is subject to periodic inspections by the department for purposes of enforcing Tax Law Articles 28 and 29, in accordance with Tax Law § 1142-A(f).
- (d) The department may estimate, on the basis of external indices, the amount of tax due from a parking facility operator where such operator:
- (1) fails to keep and make available any of the records required or authorized to be kept by Tax Law § 1142-A or this Part, in the manner provided in such law or this part, for any portion of the period so required, or
  - (2) does not cooperate with or interferes with the commissioner, any authorized employee of the department or the agent of either of them in conducting the walkabout described in this section.
- (e) Nothing in this Part shall be construed to prevent the department from using or furnishing information as provided in Tax Law § 1146 or as otherwise provided by law.

Sales Tax Regulations **§ 538.6(a)** provides: Other obligations of parking facility operators.

- (a) The parking facility operator and its officers and employees shall cooperate with and shall not interfere with the commissioner, the Department's authorized employee, or the agent of either of them while any of them conducts the walkabout described in § 538.5 of this Part.