

00-8 October 23, 2000

FINANCE MEMORANDUM**Protective Refund Claims for
Commercial Rent Tax**

In its decision in Matter of Fried, Frank, Harris, Shriver & Jacobson (a Partnership) TAT(H) 97-16(CR), the NYC Tax Appeals Tribunal ALJ ruled that a tenant liable for NYC Commercial Rent or Occupancy Tax ("CRT") must file a refund claim when the tenant receives a credit or rebate of real property tax escalation payments made to a landlord that were included in base rent. The tenant may not reduce base rent subject to tax by the amount of any such credit or rebate for the tax period in which the credit or rebate is received.

Refund claims under the CRT must be filed within 18 months after the filing of the annual return for the year or within six months after the payment of the tax, whichever is later. Ad. Code §11-709.a. Tenants may receive credits or rebates of property tax escalation payments well after the applicable refund period has expired. To protect tenants from the adverse effects of the limitations period in these cases, the Department has modified the annual CRT return to provide for an automatic protective refund claim with respect to any overpayment of tax due to the inclusion in the base rent reported on the return of property tax escalation payments for which the tenant later receives a credit or rebate. By signing and filing the return, the taxpayer will have made a protective refund claim. The modified forms may only be used for tax years beginning on or after June 1, 2000. The new form will be included in Booklet X and will be available on the Department's web site (<http://nyc.gov/finance>) in January, 2001.

Although the submission of the return will ensure that the refund claim is timely, the return does not satisfy the obligation of the taxpayer to establish the amount of overpayment for which a refund is requested. The Department will not issue any CRT refund until the taxpayer receives the tax escalation rebate or credit from the landlord and the tenant submits sufficient information to establish the amount of overpayment of CRT.

The Department of Finance has issued this Finance Memorandum for the purpose of advising taxpayers and tax professionals of, and explaining the Department's current position and procedures with respect to, the issue addressed so that they may act accordingly. Finance Memoranda are advisory in nature and are merely explanatory. Finance Memoranda are not declaratory rulings or rules of the Department of Finance and do not have legal force or effect, do not set precedent and are not binding on taxpayers.