

UPDATE ON AUDIT ISSUES

Commercial Rent Tax

Billboards

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I. ISSUE

Billboards and advertising signs are taxable premises under the New York City Commercial Rent Tax (“CRT”). Unless properly reported for CRT purposes, the base rent paid with respect to billboards has been difficult to discover because taxpayers frequently include the expense in advertising costs if they file New York City returns for the General Corporation Tax (“GCT”) or Unincorporated Business Tax (“UBT”).

II. CITE

CRT is charged on the base rent paid for the occupancy or use of taxable premises in Manhattan. Tenants have the burden of filing returns and paying tax for each taxable premises they rent, and CRT applies if:

- the taxable premises is located in the borough of Manhattan, south of the center line of 96th Street;
- the annual or annualized gross rent paid is at least \$250,000; and
- the taxpayers do not meet any other exemption criteria, such as short rental periods, residential subtenants, use for theatrical productions, and not-for-profit status.

Advertising signs, or billboards, are taxable premises for this purpose.

The Administrative Code defines “premises” as “any real property or part thereof, and any structure thereon or space therein”, and “taxable premises” as, in relevant part, “any premises in the city occupied, used or intended to be occupied or used for the purpose of carrying on or exercising any trade, business, profession, vocation or commercial activity, including any premises so used even though it is used solely for the purpose of renting, or granting the right to occupy or use, the same premises in whole or in part to tenants.” See, Administrative Code Sections 11-701.4 and 11-701.5. The Department’s regulations further provide, in relevant part, that the definition of taxable premises includes “advertising signs on the tops of buildings or outside of buildings or structures, or located on otherwise unoccupied land.” See, Rules of the City of New York, Title 19, Chapters 7-01 (subparagraph (3) of the definition of “taxable premises”).

The tenant of a billboard lease that gives rise to CRT must file a CRT return that identifies the billboard as a taxable premises and pay CRT on its base rent in order to fulfill its obligations under the CRT. See, Administrative Code Sections 11-702.a(2), and 11-705 and Rules of the City of New York, Title 19, Chapters 7-02 and 7-07(a).

III. RECOMMENDATIONS

The appropriate forms for reporting the CRT due on billboards are NYC CR-Q (quarterly return) and NYC CR-A (annual return). The forms must be filed, respectively, for each quarter and year that CRT is due. CRT must be paid with each quarterly return and the annual return as required.

If a taxpayer is non-compliant with respect to CRT required to be reported and paid on the base rent for a billboard, the taxpayer should immediately seek to fulfill its current and past filing and paying obligations. If the taxpayer is not currently under audit, the taxpayer may consider the Voluntary Disclosure and Compliance Program (“VDCP”) for a CRT deficiency. More information on the program can be found on the Department’s website.

Taxpayers that are currently under audit for CRT or other business taxes should contact their auditor to discuss a resolution of any CRT deficiency related to a billboard. These taxpayers are ineligible for the VDCP, however, the Department is seeking to resolve CRT deficiencies related to billboards. In cases involving long-term noncompliance, the Department has offered to accept the tax and interest due for the 6 most recent tax years subject to assessment for non-payment, i.e., years ending May 31, 2013 or earlier, in full satisfaction of the CRT deficiency. The maximum “look-back” period the Department applies under the VDCP is generally 6 years.

The taxpayer’s auditor will also review whether the billboard has been properly addressed under the GCT and UBT. If the auditor determines that a GCT or UBT adjustment is necessary, the Department may choose to address the matter separately or as part of a single resolution with the CRT deficiency.