

New York City – Retailers subject to commercial rent tax

October 16, 2013

In brief

Retailers should be aware of an often-missed tax on the occupancy of commercial premises in Manhattan, south of 96th street, imposed at the effective rate of 3.9% of base rent. Taxable premises are typically traditional office and retail space but can include any premises occupied, used, or intended to be occupied or used in carrying on any trade or business. New York City imposes a maximum 47.5% penalty on a taxpayer's failure to file and pay the tax. There are also other statutory penalties including penalties for negligence and substantial understatement of tax. We have observed that the City is increasing audit activity and our expectation is that many retail tenants may soon find themselves under scrutiny for this tax. Accordingly, affected retailers not filing and paying the commercial rent tax should consider their options for becoming compliant.

In detail

Commercial rent tax imposition

The tax is charged to *tenants* that rent space in Manhattan, south of 96th Street, for any trade, business, profession, or commercial activity, and that have annual or annualized gross rent paid of at least \$250,000.

Tenants subject to tax

A 'tenant' is someone that pays rent as a lessee, sub-lessee, licensee, or concessionaire. A tenant can be an individual, partnership, society, association, joint stock company, corporation, estate, receiver, assignee, trustee or any other person acting in a fiduciary capacity. Tenants include tenant-shareholders in

co-ops and corporations that lease from an affiliate or from an officer or stockholder in the corporation.

Base rent

Base rent is the amount paid or required to be paid for the use or occupancy of premises, including payments required to be made on behalf of a landlord for real estate taxes, water and sewer rents, or any other expense normally payable by the landlord other than expenses for the improvement, repair, or maintenance of the tenant's premises.

If base rent is for a period of less than one year, it is annualized by assuming it was paid on an equivalent basis for an entire year.

Where the tenant subleases the premises, base rent is reduced by amounts received from the subtenant.

Tax rate

The tax rate is 6% of base rent. All taxpayers are granted a 35% base rent reduction, which reduces the effective tax rate to 3.9%. In addition, tenants with annual taxable rents between \$250,000 and \$300,000 are eligible for a sliding-scale credit that partially offsets the tax.

Exemptions

Tenants are exempt from the commercial rent tax if they:

- have an annualized base rent less than \$250,000 (however, tenants with annual gross rent paid over

\$200,000 are required to file a tax return)

- rent for 14 days or less during the tax year
- use at least 75% of floor space to rent to others for residential purposes (excluding hotels)
- rent property for certain theatrical productions (the exemption applies for the first 52 weeks after production begins)
- are a governmental body or a nonprofit religious, charitable, or educational organization
- are other types of nonprofit organizations as long as the property is not used for commercial purposes and they receive a written tax exemption from the state

- are located in the 'World Trade Center Area'
- occupy a property located in the [Commercial Revitalization Program](#) abatement zone and the property is used for **retail sales purposes**.

Filing deadlines

Every tenant must file an annual return on or before June 20 covering the prior year, from June 1 to May 31, unless both of the following are true:

- the annual gross rent paid for any taxable premises (before deductions and reductions) is \$200,000 or less, and
- the rent received from any subtenant of the premises is \$200,000 or less.

Every tenant subject to tax for a period must also file a quarterly return.

Failure to file and pay penalties

New York City imposes a maximum 47.5% penalty on a taxpayer's failure to file and pay its tax. New York City also imposes negligence penalties (5% of the underpayment plus 50% of the interest on the underpayment) and substantial understatement of liability penalties (10%).

The takeaway

New York City's commercial rent tax is a relatively unknown tax with significant penalties for noncompliance. The tax is quite often missed by retailers, especially those that are not based in New York City. Affected retailers not remitting the commercial rent tax should consider their options for getting in compliance with the tax.

Let's talk

For more information about New York City's Commercial Rent Tax, and its applicability to retailers, please contact:

State and Local Tax Services

Tov Haueisen
Principal, *New York*
+1 (646) 471-0848
tov.haueisen@us.pwc.com

Jonathan Robin
Director, *New York*
+1 (646) 471-0509
jonathan.robin@us.pwc.com

Barbara Coulter
Partner, *Atlanta*
+1 (678) 419-1697
barbara.coulter@us.pwc.com