



When you have a sales tax problem,  
*we are the solution!*

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## Going Cuckoo for Capital Improvements

The term “capital improvement” is seemingly used too often and not enough. Not all work completed by contractors qualifies as an exempt capital improvement and not all work completed by contractors is a taxable repair.

This is an area of the tax law that can drive even the most reasonable person absolutely cuckoo!



The most important thing to remember is that it's your responsibility to prove the job is exempt - it is not the state's job to prove the job is taxable. It's very much a “guilty until proven innocent” type of situation. You should also know that as sales tax is a fiduciary responsibility you can be held personally liable for a sales tax assessment. So since you're guilty until proven innocent and can be personally responsible for an assessment, it seems fair to say that the capital improvement rules are rules you want to know.

So what is a capital improvement? It is an addition or alteration to real property that:

- substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;
- becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
- is intended to become a permanent installation.

As if that isn't confusing enough, there are often special rules related to different kinds of work completed.

To document a capital improvement, you should obtain a New York State Form ST-124, Certificate of Capital Improvement. It must be properly completed, obtained in a timely fashion and needs to be accepted in good faith. You must also keep the certificate in your files as obtaining the certificate and throwing it away will not help if an audit is conducted.

There's also a hidden danger related to capital improvements: tax on purchases. All too often, businesses work to ensure they are collecting tax correctly but fail to consider if they are paying tax correctly. The materials used in a capital improvement are subject to sales tax and if a vendor fails to charge you tax for any reason, it's up to you to self-assess use tax.

Sometimes in the construction industry, the materials are being purchased from outside New York State. Those vendors usually do not collect New York State tax (see: nexus). Some vendors in New York State don't charge tax because their competitors don't but that is no excuse (see: If your friends jumped off a bridge would you?). The bottom line is you must be aware of tax on every transaction your business is involved in.

Whether you want to try to prevent a problem prior to being audited or you are currently being audited, we are here to help you. Contact Sales Tax Defense LLC so you can spend less time going cuckoo and more time doing whatever the opposite of going cuckoo is.



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## Assessments That Were Transferred to an Estate

They say the only two guarantees in life are death and taxes. Well, Sales Tax Defense LLC recently helped someone who was dead with their tax problems.

When you lose someone dear to you, you don't want to have to deal with taxes. However, when the deceased person had tax problems, taxes become something you have to deal with because those assessments transfer to the estate. That is the exact situation our client recently encountered when he became the executor of his brother's estate.

As he never even knew his brother had tax issues, figuring out exactly why he was assessed and what could be done about the assessments wasn't easy so he engaged us. We were able to work with New York State to determine that he was held as a responsible person for sales and use tax purposes due to his involvement in a business. More importantly, we were able to determine that the 20-year statute of limitation had expired on all of his assessments.

We worked to have the assessments extinguished and the entire matter was resolved in less than 2 months! Now the estate is free and clear of any tax assessments and our client can focus on the things that are more important than money.

## About Us

We are a dedicated team of tax professionals who have committed our careers to helping businesses and fellow professionals with tax problems. Since the only work we are focused on is solving tax problems, businesses never have to be concerned that we will try to sell them other services they do not need. And professionals never have to be concerned with us encroaching on their client relationships, because we view you, our fellow professional, as our client.

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