

# Sales and Use Tax

AND THE NEW YORK CONSTRUCTION INDUSTRY

Third Edition

**Brian G. Cunningham, Esq.**

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## **DEDICATION**

This book would not have been possible without the guiding hand of Gerard Cunningham—my law partner, mentor, and, most important, father. For this, and much more, I am eternally grateful.

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# INTRODUCTION

Among the various methods created by the New York State Legislature for generating revenue is the assessment and collection of sales and use tax (hereinafter referred to as “sales tax” except where use tax issues are specifically discussed). Set forth in N.Y. Tax Law articles 28 and 29, sales tax constitutes an integral component of New York’s construction industry.

Currently, New York collects a statewide sales tax of 4.00 percent on every taxable sale.<sup>1</sup> In addition, the state’s counties, cities, towns and qualifying school districts have authority to adopt legislation assessing a “local” sales tax.<sup>2</sup> Most, if not all, of New York’s counties and cities have adopted sales tax legislation. Counties located in the Metropolitan Commuter Transportation District (MCTD) also pay an additional 3/8 percent dedicated to benefit the MCTD.<sup>3</sup> As the result of the combined state, local and, in some instances, MCTD sales taxes, taxpayers currently can pay up to 8.875% in sales tax on every sale of taxable property or services.

Sales tax is a creature of statute. New York strictly prohibits the government from collecting a tax that has not been specifically authorized by statute.<sup>4</sup>

This book discusses how sales tax laws, regulations, policies and decisions affect New York’s construction industry. Where appropriate, practical tips are provided. This book is an instructional guide only and is not meant as a substitute for consultation with qualified attorneys or accountants familiar with New York’s tax laws and the methods for handling taxpayer disputes. Sales tax disputes are fact-driven and the variables of the construction industry are as infinite as the methods by which governments create means to raise revenue.

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1 See N.Y. Tax Law § 1105; see also N.Y. Comp. Codes R. & Regs. tit. 20 § 530.1(a) (N.Y.C.R.R.) (4.00% tax rate effective since June 1, 2005).

2 20 N.Y.C.R.R. §§ 530.2, 530.3.

3 Counties located in the MCTD include New York, Kings, Queens, Staten Island, Bronx, Nassau, Suffolk, Westchester, Dutchess, Putnam, Rockland and Orange.

4 *Bldg. Contractors Ass’n v. Tully*, 87 A.D.2d 909, 910, 449 N.Y.S.2d 547 (3d Dep’t 1982) (“As thus posed, the traditional rule applies that “[a] statute which levies a tax is to be construed most strongly against the government and in favor of the citizen. The government takes nothing except what is given by the clear import of the words used, and a well-founded doubt as to the meaning of the act defeats the tax.”” (citations omitted)).

**ABOUT THE AUTHOR**

Brian G. Cunningham was introduced to the construction industry's struggles with New York sales tax law when he began practicing with his father, Gerard, about 25 years ago. All these years later, the New York City/Long Island-based law firm of Cunningham & Cunningham, LLP, continues to guide contractors, developers and other clients through the maze that is New York sales tax law.

In addition to this book, Brian is the author and publisher of *New York Sales Tax E-Mail Update*. This periodic subscriber service analyzes recent decisions, opinions and memoranda issued by the New York State Department of Taxation and Finance that are of interest to the construction industry and its related service providers. He has written articles on sales tax and the construction industry for the New York State Bar Association General Practice Section's publication *One on One* and the Building Contractors Association, Inc. newsletter. Brian also regularly conducts seminars on sales and use tax and the New York construction industry.

Brian is a member of the NYSBA and its General Practice Section. He is a graduate of Bridgeport School of Law (now Quinnipiac University School of Law) and earned his undergraduate degree from Syracuse University's S.I. Newhouse School of Public Communications. He can be reached at [brian@cunninghamllp.com](mailto:brian@cunninghamllp.com) or (212) 679-0404. The firm website is [www.cunninghamllp.com](http://www.cunninghamllp.com).

Brian married his best friend Karen almost 30 years ago and is the proud father of two sons, Aidan and Conor. When not at work, Brian can be found spending hours testing that most profound question: Analog or digital: Which sounds better?