

Instructions for Form CR-A

FINANCE
NEW YORK



Commercial Rent Tax Annual Return

Applicable for the tax period June 1, 2004, to May 31, 2005, ONLY

IMPORTANT INFORMATION

- Taxpayers whose annualized base rent before the 35% rent reduction and the NYC Commercial Revitalization Program special reduction is less than \$250,000 are no longer subject to the Commercial Rent Tax. However, a tax return may be required to be filed.
- A tax credit is allowed for taxpayers whose annualized base rent before the 35% rent reduction and the NYC Commercial Revitalization Program special reduction is at least \$250,000, but is less than \$300,000. The tax credit is calculated on page 2, line 16.
- A tax return is no longer required to be filed with respect to any premises if your annualized gross rent paid is \$200,000 or less and you do not receive over \$200,000 in rent from any subtenant.
- A 35% rent reduction is allowed in computing base rent subject to Commercial Rent Tax.
- The applicable tax rate for each taxable premises is based on the Base Rent Before Rent Reduction and the NYC Commercial Revitalization Program special reduction (lines 7 and 5b, or line 12, if applicable). However, that tax rate is applied to the Base Rent Subject to Tax (line 9) in determining your tax for each taxable premises. If that amount is less than \$250,000, no tax is due. If that amount is at least \$250,000 but less than \$300,000, a tax credit is allowed.
- In computing base rent, rent received from subtenants may be deducted by a prime tenant, regardless of the amount.
- The Commercial Rent Tax has been repealed with respect to rent paid for all premises located north of the center line of 96th Street in Manhattan and the boroughs of the Bronx, Brooklyn, Queens and Staten Island.
- The submission of this return represents an automatic protective refund claim for any overpayment of the tax reported on this return that results from the inclusion in base rent of NYC Real Property Tax escalation payments for which the ten-

ant/taxpayer subsequently receives a refund or credit from the landlord. Notwithstanding the protective refund claim, no refund of Commercial Rent Tax will be paid unless and until the property tax refund or credit is received from the landlord and the tenant submits, with a copy of this return, sufficient information to establish the amount of any such overpayment.

GENERAL INFORMATION

FORMS TO BE USED AND PERIODS COVERED

An annual return (CR-A) is required to be filed by every tenant, on or before June 20, covering the preceding year from June 1 to May 31. Every tenant subject to tax for a period must file a quarterly return (Form CR-Q). Quarterly returns are due for the three-month periods ending on the last days of August, November and February of each tax year and must be filed within 20 days after the end of the period they cover.

Every tenant subject to tax must file an annual return on Form CR-A. In addition, every tenant not subject to tax for periods beginning on or after June 1, 2001 because its annualized base rent before the 35% rent reduction and the NYC Commercial Revitalization Program special reduction is less than \$250,000 (*refer to Exemptions, below*), will not be required to file an annual return (CR-A) **if, with respect to any premises, its annualized gross rent is \$200,000 or less, and it does not receive over \$200,000 in rent from any subtenant.**

If a tenant ceases to do business, the tax is due immediately, and the tenant must file a final return for the entire year (Form CR-A) within 20 days from the date the tenant ceases to do business. If the tenant nevertheless continues to pay rent for the taxable premises, in which case the tenant must continue to file returns and pay the tax.

If a tax return or payment is delivered to the Department of Finance by U.S. mail after the due date, the date of the U.S. Postal Service postmark stamped on the envelope will be considered the date of delivery, provided the postmark date falls on or before the due date including any extension and the return was deposited in the mail, postage prepaid and properly addressed. Non-U.S. Postal Service postmarks will also be recognized, provided delivery to the Department of Finance occurs within five days of the postmark date. If the five-day limit is exceeded, the taxpayer must establish: a) the item was actually deposited in the mail by the due date; b) the delay in receipt was due to a delay in the transmission of the mail; and c) the cause of the delay.

If the due date falls on a Saturday, Sunday or legal holiday, the due date is extended to the next succeeding business day.

For late filings of quarterly returns, interest must be paid on the amount of the underpayment from the due date until the earlier of (1) 20 days after the end of the tax year, or (2) the date as of which the tax paid for the tax year equals 75% of the full tax required to be paid for the tax year. **The interest may only be paid with the annual return.** For calculation of interest, call Taxpayer Assistance at: 212-504-4036. Interest amounting to less than \$1 need not be paid.

WHO IS A TENANT

A tenant is a person who pays or is required to pay rent for premises as a lessee, sublessee, licensee or concessionaire. No tax return need be filed if the individual or the business entity is the same individual or entity owning the premises. The tax form should be returned to the Department of Finance stating the owner's name and address, Employer Identification Number or Social Security Number, the address of the property and the block and lot number as shown on the real estate tax bill. Shareholders in cooperative corporations are not considered "owners of record."

The following situations do not exempt the tenant from tax:

- a) where a building is owned, not by a tenant but by a spouse or parent of the tenant;
- b) where a building is owned by the tenant jointly or in common with another person, other than a spouse;
- c) where a building is owned by a corporation of which the tenant is an officer or holder of all or part of the corporate stock;
- d) where the tenant is a corporation and the building is owned by a subsidiary corporation or by a parent corporation;
- e) where the tenant is a corporation and the building is owned by an officer or stockholder of the corporation.

TAXABLE PREMISES

Taxable premises are premises used or intended to be used to carry on any trade, business, professional, vocational or commercial activity, including premises used solely for the purpose of renting the same in whole or in part to subtenants. Taxable premises include a specific part of particular space in a warehouse rented for the storage of goods, or in a garage, parking lot or parking area rented for the parking of motor vehicles, in connection with the tenant's conduct of business or professional activity; also included is a safe deposit box or locker or beach cabana if used for business purposes.

WHAT CONSTITUTES RENT

Rent is the consideration paid or required to be paid by a tenant for the use or occupancy of premises, valued in money, whether received in money or otherwise, including all credits, property, or services of any kind, as well as any payment required to be made by a tenant on behalf of the landlord for real estate taxes, water and sewer charges, or any other expenses (including insurance) normally payable by a landlord who owns the realty, other than expenses for the improvement, repair or maintenance of the tenant's premises.

Where the rent paid by a tenant for the occupancy of taxable premises is measured in whole or in part by the gross receipts from the sales within the premises, the rent, for purposes of computing the Commercial Rent Tax is the actual percentage of gross receipts due the landlord, but not in excess of 15% of gross receipts.

Tenant shareholders in cooperative buildings should calculate the amount of rent subject to tax as provided in Section 7-01 "Rent" of the Commercial Rent Tax Rules. (Title 19, Rules of the City of New York, Chapter 7) If a tenant uses two or more taxable locations in the same building at the same time, the total rent paid for all such locations constitutes rent paid for one taxable premises.

WHAT CONSTITUTES BASE RENT

Base rent is generally the rent paid for each taxable premises by a tenant to the landlord for a period, less the amounts received by or due such tenant for the same period from any subtenant of any part of the premises. (See instructions to line 4, Rent from Subtenant(s))

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

In computing base rent, rent received from a subtenant subject to the tax or exempt from the tax for the tax year because the subtenant's annualized base rent before the 35% rent reduction and the NYC Commercial Revitalization Program special reduction is less than \$250,000 for period beginning on or after June 1, 2001, and rent received from a subtenant that is a governmental entity, the United Nations, or a nonprofit religious, charitable or educational entity exempt from the tax may be deducted by a prime tenant.

NOTE: Base rent paid by a tenant for one taxable premise cannot be reduced by deducting rents received by that tenant for another taxable premise of which he is also a tenant.

A tenant is also entitled to deduct from the base rent amounts paid by the tenant for the tenant's own use of the premises:

- a) for railroad, air, or omnibus transportation purposes;
- b) for piers, insofar as they are used in interstate or foreign commerce;

- c) which are located in, on, above, or under a public place and are defined by law as special franchise property;
- d) which are advertising space or signs, vending machines, or newsstands in subway or elevated railroad premises operated by the New York City Transit Authority when the rent is payable to the Transit Authority; or
- e) which is parking space subject to the additional 8% parking tax imposed under Administrative Code Section 11-2049.

For a more detailed discussion of deductions in calculating base rent refer to Section 11-704 of the NYC Administrative Code and Section 7-01 "Base Rent" of the Commercial Rent Tax Rules. (Title 19, Rules of the City of New York, Chapter 7)

EXEMPTIONS

The following are exempt from payment of the Commercial Rent Tax:

1. a tenant whose annualized base rent before the 35% rent reduction and the NYC Commercial Revitalization Program special reduction (line 5b) is less than \$250,000 for period beginning on or after June 1, 2001. The annualized base rent for a period of less than one year is determined as if the rent had been paid on an equivalent basis for an entire year;
2. a tenant who uses premises for 14 days or less (whether or not consecutive) in a tax year, and is not required to pay rent for a longer period;
3. a tenant (other than the operator of a hotel, apartment hotel or lodging house) who uses premises for residential renting to others to the extent of 75% or more of the rentable floor space;
4. a tenant who uses premises for certain dramatic or musical arts performances for less than 4 weeks where the performances are not intended to continue for less than 4 weeks. A tenant who uses taxable premises for the production and performance of a theatrical work is exempt from the tax with respect to the rent paid for the taxable premises for a period not exceeding 52 weeks from the date production commenced. For purposes of this exemption, production will be considered to commence on the date public performances begin; and
5. various governmental bodies, the U.N., and nonprofit religious, charitable and educational organizations. Other nonprofit organizations may be exempt from the tax. For more information, see Sections 7-04 through 7-06 of the Commercial Rent Tax Rules. (Title 19, Rules of the City of New York, Chapter 7)

COMBINED BUSINESS/RESIDENTIAL USE

Where a tenant pays an undivided rent for a premises used both for residential and business purposes, the tax applies to that part of the rent that is attributable to the part of the premises

used for business purposes. In such a case, the rent attributable to business use is the amount which the tenant deducts as rent for the premises for federal income tax purposes.

CHANGE OF BUSINESS INFORMATION

Correct any errors in printed name, address and account identification number. Enter the business code applicable to your business as used on the federal return.

WHEN AND WHERE TO FILE

File your return within 20 days after the end of the period covered by this return. Penalty and interest will be assessed for returns filed late. The return should be mailed to:

**NYC Department of Finance
P.O. Box 5150
Kingston, NY 12402-5150**

HOW TO COMPLETE ANNUAL TAX FORM CR-A

- Complete this return by beginning on page 2.
- Complete the entire schedule for each premises.
- If you rent more than three premises or have more than one subtenant, attach an additional schedule.

Preparer Authorization: If you want to allow the Department of Finance to discuss your return with the paid preparer who signed it, you must check the "yes" box in the signature area of the return. This authorization applies only to the individual whose signature appears in the "Preparer's Use Only" section of your return. It does not apply to the firm, if any, shown in that section. By checking the "Yes" box, you are authorizing the Department of Finance to call the preparer to answer any questions that may arise during the processing of your return. Also, you are authorizing the preparer to:

- Give the Department any information missing from your return,
- Call the Department for information about the processing of your return or the status of your refund or payment(s), and
- Respond to certain **notices that you have shared with the preparer** about math errors, offsets, and return preparation. The notices will not be sent to the preparer.

You are not authorizing the preparer to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the Department. The authorization cannot be revoked, however, the authorization will automatically expire no later than the due date (without regard to any extensions) for filing next year's return. **Failure to check the box will be deemed a denial of authority.**

SPECIFIC INSTRUCTIONS**PAGE 2 - Computation of Base Rent**

For purposes of completing this form round off cents to the nearest whole dollar.

LINE 1 - TAXABLE PREMISES

Enter address, zip code and block and lot number of each taxable premises where the annualized gross rent exceeds \$200,000. To find the block and lot number corresponding to the taxable premises, log on to the Department of Finance website at www.nyc.gov/finance and mouse over the Real Estate Tax (blue bar) drop down menu, click on "Assessment Roll" and click on "Search by Address". Alternatively, the block and lot number can be obtained from your landlord or managing agent. If you have more than three such premises, make copies of page 2 or attach a schedule giving the same information required by the form showing figures and computations clearly. Make sure the copies or the schedule bear the taxpayer's name, address, period covered by the return, Account ID Number, and Employer Identification Number or Social Security Number.

LINE 2 - GROSS RENT PAID

Determine amount of gross rent paid for each premises and enter on this line (Refer to "What Constitutes Rent", page 2.) If your gross rent is based on a percentage of sales receipts, exclude the excess of 15% of those receipts. If you rent an entire apartment, hotel suite, or other accommodation that you use or occupy for commercial activities and claim as a business deduction, the full amount of the rent must be entered. If you pay a single rent to one lessor for two or more taxable premises, see section 7-01 "Allocation of single rent for two or more taxable premises" of the Commercial Rent Tax Rules (Title 19, Rules of the City of New York, Chapter 7) for the method to be used to allocate rent among the taxable premises.

LINE 3 - RESIDENTIAL RENT

If you use your home for business and residential purposes, enter here the amount of the rent attributable to residential use only. It is presumed that the amount you claimed as a business deduction for rent on your federal income tax return is the amount of rent attributable to business use of the premises.

LINE 4 - RENT FROM SUBTENANT(S)

Enter here amounts paid or due to you as rent from any subtenant. In computing base rent, rent received from a subtenant subject to the tax or not subject to tax for the tax year because its annualized base rent is less than \$250,000 for period beginning on or after June 1, 2001, and rent received from a subtenant that is a governmental entity, the UN, or a nonprofit religious, charitable or educational entity exempt from the tax, may be deducted by a prime tenant.

Also enter the subtenant's name, Employer Identification Number (for corporations or partnerships) or Social Security Number (if a sole pro-

prietorship). Note that such rents may be deducted only from the gross rent of the premises which the subtenant occupies and may not be applied against any other premises rented by the taxpayer.

If you have more than one subtenant, make copies of page 2 or attach a schedule giving the same details as required on page 2.

In entering amounts paid by subtenants whose rent is based on a percentage of sales receipts, exclude the amount in excess of 15% of those receipts.

Amounts received by a garage or parking lot operator for allowing the parking of a vehicle anywhere on his premises is not deductible unless:

- a particular space has been permanently assigned for the exclusive use of the tenant; and
- the vehicle is used for commercial purposes by the tenant; and
- a completed Certificate of Assigned Space Use has been taken from the tenant.

LINE 5a - OTHER DEDUCTIONS

Enter here any amounts included in gross rent allowable as deductions for eligible taxpayers and detail such deductions on an attached schedule.

LINE 5b - COMMERCIAL REVITALIZATION PROGRAM SPECIAL REDUCTION

If you are claiming a special reduction under the NYC Commercial Revitalization Program, attach a copy of either your Certificate of Abatement from Real Estate Tax, or your Certificate of Eligibility for Commercial Rent Tax Benefits. A separate Certificate must be attached for each premises for which the special reduction is claimed.

The NYC Commercial Revitalization Program provides both Real Estate Tax and Commercial Rent Tax benefits with respect to qualifying leases of premises in the Title 4 abatement zone, defined generally as the area in Manhattan bounded by Murray Street and Frankfort Street on the north, and South Street, Battery Place and West Street on the east, south and west, respectively. Leases must be new, renewal or expansion leases with lease commencement dates beginning on or after April 1, 1995 and must meet minimum lease term and expenditure requirements. To be eligible for benefits, the premises must be located in a building constructed before 1975 and be used for either office or retail purposes.

For more information concerning eligibility requirements under the NYC Commercial Revitalization Program, e-mail: www.nyc.gov/contactfinance

SPECIAL NOTE FOR ELIGIBLE TAXPAYERS

The amount of the special reduction available to eligible taxpayers under the NYC Commer-

cial Revitalization Program (line 5b) IS NOT taken into account and must be added to the line 7 amount for the following purposes:

- annualizing the base rent (lines 10-12),
- determining whether the taxpayer is exempt because its base rent is below \$250,000 for periods beginning on or after June 1, 2001 (see "EXEMPTIONS" on page 2 of these instructions),
- determining the amount of credit available (line 16), and
- determining the applicable tax rate. However, once the applicable rate is determined, enter the amount on line 9 (after the special reduction and 35% rent reduction) on line 13 or 14, whichever is applicable.

LINE 6 - TOTAL DEDUCTIONS

Add lines 3 through 5b and enter the total deductions in line 6.

LINE 7 - BASE RENT BEFORE THE 35% RENT REDUCTION

Subtract line 6 from line 2 to obtain the amount of your base rent before the 35% rent reduction.

LINE 8 - 35% RENT REDUCTION

Multiply line 7 by 35% and enter here.

LINE 9 - BASE RENT SUBJECT TO TAX

Subtract line 8 from line 7 to obtain the amount of your base rent subject to tax.

ANNUALIZATION OF BASE RENT

Complete lines 10 through 12 only if the amount shown on line 7 does not represent rent paid for a full twelve-month period.

LINE 10 - MONTHS AT PREMISES

Enter the dates (month and year) that occupancy or use of such premises began and ended. Compute the number of months occupied or used to the nearest full month and enter.

LINE 11 - MONTHLY BASE RENT BEFORE RENT REDUCTION

Divide the sum of lines 7 and 5b by line 10 to arrive at the average monthly base rent before rent reduction.

LINE 12 - ANNUALIZED BASE RENT BEFORE RENT REDUCTION

Multiply line 11 by 12 (months). This is your annualized base rent before rent reduction.

LINES 13 AND 14 - RATE CLASS

- If lines 10 through 12 are **not** applicable, and if the sum of lines 7 and 5b is \$249,999 or less, transfer the amount on line 9 (**not the amount on line 7**) to line 13. If the sum of lines 7 and 5b is \$250,000 or more, transfer the amount on line 9 (**not the amount on line 7**) to line 14.

- If lines 10 through 12 are applicable, and if the line 12 amount is \$249,999 or less, transfer the amount on line 9 (not the amount on line 12) to line 13. If the line 12 amount is \$250,000 or more, transfer the amount on line 9 (not the amount on line 12) to line 14.

LINE 15 - TAX DUE BEFORE CREDIT

Multiply line 14 amounts by 6% and enter the result on line 15. This is your tax due before the tax credit. The total of line 15 should equal the amount calculated as tax due on line 2, page 1 of the form.

LINE 16 - TAX CREDIT

Compute your tax credit using the Tax Credit Computation Worksheet provided at the bottom of page 2 of the form and enter the result on line 16. Transfer the total of line 16 to line 3, page 1 of the form.

PAGE 1

Computation of Tax

LINE A - PAYMENT

Enter the amount of payment remitted with this return in the space provided.

LINES 1 AND 2 - COMPUTATION OF TAX DUE

Enter the number of taxable premises you have occupied or used during the tax period in the appropriate columns on lines 1 and 2.

Enter on lines 1 and 2, whichever applies, your base rent totals for all premises in each class calculated on lines 13 and 14 from page 2. Multiply "total base rent" on line 2 by the tax rate of 6% and enter the result in the column under "tax due." This amount should equal the total tax due before credit of all the premises of line 15 from page 2.

LINE 3 - TAX CREDIT

Enter the total amount of tax credit of all the premises from line 16, page 2.

LINE 4 - TOTAL TAX DUE AFTER TAX CREDIT

Deduct line 3 from line 2 and enter the result on line 4.

LINE 5 - PAYMENTS

Enter on line 5 the payments you have previously made with your quarterly returns (Forms CR-Q).

LINE 6 - BALANCE DUE

- Deduct line 5 from line 4. The result will be:
- a) your balance of tax due for the tax year, which you will enter on line 6; or
 - b) your overpayment, if line 5 is greater than the sum of line 4 and line 7 which you will enter on line 8.

LINE 7 - INTEREST/ADDITIONAL CHARGES

Enter any interest and/or penalty on line 7.

Interest

If the tax due with a quarterly return is not filed with the Department of Finance on or before the due date of the quarterly return, interest must be paid on the amount of the underpayment from the due date until the earlier of (1) 20 days after the end of the tax year, or (2) the date as of which the tax paid for the year equals 75% of the full tax required to be paid for the tax year. The interest must be paid with the annual return. If the tax payable with the annual return is not paid by the due date, interest on the amount of the underpayment must be paid from the due date of the annual return to the date paid. For calculation of interest, call Taxpayer Assistance at: (718) 935-6000. Interest amounting to less than \$1 need not be paid.

Additional Charges

- a) A **late filing penalty** is assessed if you fail to file an annual return when due, unless the failure is due to reasonable cause. For every month or partial month that this form is late, add to the tax (less any payments made on or before the due date) 5%, up to a total of 25%.
- b) If the annual return is filed more than 60 days late, the penalty imposed under *a* will not be less than the lesser of (1) \$100 or (2) 100% of the amount required to be shown on the form (less any payments made by the due date or credits claimed on the return).
- c) A **late payment penalty** is assessed if you fail to pay the tax shown on this form by the prescribed filing date, unless the failure is due to reasonable cause. For every month or partial month that your payment is late, add to the tax (less any payments made) 1/2%, up to a total of 25%.
- d) The total of the additional charges in *a* and *c* may not exceed 5% for any one month except as provided for in *b*.
- e) If a tenant, exempt from tax because the rent for the entire year is less than the applicable threshold amounts, fails to file an annual return if required, a penalty of \$100 may be imposed.

LINE 8 - OVERPAYMENT/REFUND

Complete this line if line 5 is greater than the sum of line 4 and line 7.

NOTE: If you wish to claim a refund for a **prior tax period**, file an amended return using the appropriate form for that period showing the adjusted information. Mail the amended return to the address indicated in "When and Where to File" on page 2.

LINE 9 - TOTAL REMITTANCE DUE

1. To obtain the total amount due (line 9), add line 6 and line 7. However, if line 5 does not exceed the sum of lines 4 and 7, to obtain the total amount due, add lines 4 and 7 and subtract line 5.

2. Make your check payable to the order of: NYC Department of Finance

Enter the amount of payment remitted with this return on line A in the space provided.

- Be sure that your name, EIN or SSN, and Account ID Number appear on the face of the check.
- Don't forget to sign your return.

TAXPAYER ASSISTANCE - COMMERCIAL RENT TAX ONLY

If you have a tax-related question or problem, please call (212) 232-1265/1266 Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. Hearing and speech impaired customers can call our TTY number at (212) 504-4115.

You can receive information or contact us by visiting the Department of Finance's Internet web site at the following address:

nyc.gov/finance

For recorded tax information, please call our free Citytax Dial tape library at (212) 504-4034. Follow the audio instructions and choose one of the following Commercial Rent Tax messages:

- 425 - Who must file a return?
- 426 - Forms to be used and the periods covered
- 323 - What are considered Taxable Premises?
- 324 - What is considered Rent?
- 427 - Exemptions
- 428 - How to compute the tax
- 326 - Interest and Penalty Rates
- 327 - Refunds
- 429 - What constitutes Base Rent?

PRIVACY ACT NOTIFICATION

The Federal Privacy Act of 1974, as amended, requires agencies requesting Social Security Numbers to inform individuals from whom they seek this information as to whether compliance with the request is voluntary or mandatory, why the request is being made and how the information will be used. The disclosure of Social Security Numbers by taxpayers is mandatory and is required by section 11-102.1 of the Administrative Code of the City of New York. Disclosure by subtenants is voluntary. Such numbers disclosed on any report or return are requested for tax administration purposes and will be used to facilitate the processing of tax returns and to establish and maintain a uniform system for identifying taxpayers who are or may be subject to taxes administered and collected by the Department of Finance. Such numbers may also be disclosed as part of information contained in the taxpayer's return to another department, person, agency or entity as may be required by law, or if the taxpayer gives written authorization to the Department of Finance.