

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (hereinafter “Petitioner”). Petitioner asks when its lease commences for purposes of the sales tax exemptions provided by Tax Law § 1115(ee) where Petitioner signed a lease several months before the date the parties agreed would be the “Commencement Date” of the lease.

We conclude that Petitioner’s lease commenced on the date Petitioner first had the right to occupy the property for purposes of the sales tax exemption benefits provided by Tax Law § 1115(ee).

Facts

Petitioner signed a commercial space lease for property (the “Premises”) located in lower Manhattan. The Premises are in an area that has been granted exemptions from New York State and local sales and use taxes for certain purchases of tangible personal property and services related to leased commercial office space. The lease contained several prerequisites before it was deemed “commenced” by the parties. Petitioner was precluded from accepting occupancy, or commencing renovations and outfitting the site until the “Commencement Date” as defined in the lease.

Analysis

Tax Law § 1115(ee) provides an exemption from sales and use tax for certain tangible personal property and services purchased by a tenant directly and exclusively to furnish, equip or improve leased premises in designated areas in lower Manhattan for use as commercial office space. The exemption applies only to purchases, uses and services rendered “commencing on the first day of the tenant’s lease term and ending one year later ...” Tax Law § 1115(ee); *see also* TSB-M-05(12)S. Tax Law § 1115(ee) also provides that such property must be delivered to the tenant’s leased premises for use or such services must be rendered no later than ninety days after the end of such year.

The statute does not define the “lease term” or state when it begins. *See* Tax Law § 1115(ee). While not specifically applicable to the sales tax, the definition of “an interest in real property” under the real estate transfer tax (RETT) provides guidance. Under RETT, an interest in real property includes, among other things, an interest with the right to use or occupy real property. Tax Law § 1401(f). Accordingly, for RETT, unless otherwise specified in a lease, a lease term begins when Petitioner has the right to use and occupancy of the premises. *See* TSB-A-99(1)R.

