MEMORANDUM IN SUPPORT
A.8616 (AM Cunningham) - Assembly Ways & Means
S.____(Sen. Sanders) – Senate Finance

An Act to amend the tax law, in relation to exempting site safety manager services, site safety coordinator services and concrete safety manager services from the sales and compensating use tax.

The New York Construction Safety Alliance (NYCSA), which is a coalition of leading New York City based construction site safety companies, including MWBE site safety companies, **strongly supports** A.8616/S.____, introduced by Assemblymember Brian Cunningham (D-Brooklyn) and Senator James Sanders (D-Queens), which amends New York State Tax Law to exempt construction site safety services from state sales and use taxation. Notably, site safety services are presently mandated by the New York City Building Code and related regulations.

This legislation is a necessary fix that brings tax fairness to a critical component of New York City's construction industry. Construction site safety services that are legally mandated to protect public and worker safety should not be taxed like elective or commercial security services, and the attempt by the New York State Department of Taxation and Finance (NYSDTF) to tax these services using this faulty rationale represents an extreme example of bureaucratic overreach. Again, these are not discretionary services—they are required by law, essential to public protection and legal compliance, and as such should be exempt from New York State sales tax liability.

NYCSA is a diverse coalition of experienced site safety companies committed to improving construction site safety standards throughout New York City. NYCSA members range from long-established industry leaders to certified Minority- and Women-Owned Business Enterprises (MWBEs). Together, we provide oversight, training, filings, and consulting services that ensure construction sites are compliant, efficient, and safe. Our work is critical and most important, is mandated by law.

In response to an unwarranted and legally unjustifiable bureaucratic overreach by NYSDTF, A.8616/S.____ amends NYS Tax Law § 1105 by adding a new subdivision (iii) that exempts from sales tax services relating to site safety plans, site safety inspections, site safety supervision or site safety management, or any service rendered by a licensed site safety manager, site safety coordinator, concrete safety manager, or construction superintendent required by the New York City Building Code, or any rule or local law of the City of New York. A.8616 therefore clarifies that legally mandated construction site safety services should not be subject to New York State sales tax.

NYSDTF has, without legal justification or rational explanation, unilaterally determined that construction site safety services should be subject to New York State sales tax liability. This sudden, arbitrary decision by a state agency has resulted in potentially massive, retroactive sales tax liability for construction site safety companies that threatens their viability. NYCSA vehemently disagrees with the position of NYSDTF for the following reasons:

Legally Required Site Safety Services Should Not Be Subject To Sales Tax.

Under the NYC Building Code, safety compliance is legally mandated. It is non negotiable. Construction sites are required to provide site safety managers and coordinators for large-scale or high-risk projects; construction superintendents for 1- to 3-family home construction; concrete safety managers where required; and file detailed safety plans and provide related inspections to ensure that construction sites are safe. Taxing these mandated services is tantamount to penalizing compliance. It undermines enforcement, sends the wrong message, and introduces cost pressures that may compromise safety. It is bad public policy.

NYSDTF's Arbitrary Classification of Site Safety Services as Taxable is Inaccurate and Harmful.

NYSDTF has unilaterally deemed site safety services to fall under the category of "protective and detective services," a misclassification that fundamentally misunderstands the nature of this work. Site safety professionals are not security guards or private investigators; their work focuses on accident prevention, regulatory compliance, and worker safety, not physical protection or surveillance. NYSDTF is therefore imposing this taxation based on a completely faulty premise and grossly overexpansive interpretation of an existing statute.

Retroactive Enforcement of Sales Tax Liability is Unjust and Destabilizing.

Making matters worse, NYSDTF is applying its determination *retroactively*, with unexpected sales tax audits assessing liability that goes back several years. This surprise enforcement has resulted in enormous and unexpected tax bills for some site safety companies, especially smaller and MWBE firms, that now threaten their very existence.

NYSDTF's Unilateral Decision to Tax this Industry is Having a Disparate and Potentially Disastrous Impact on Small and MWBE Firms.

The current tax policy disproportionately harms smaller safety consulting firms and MWBEs, particularly those involved in public and affordable housing projects. Many of these smaller companies operate as subcontractors without the leverage or liquidity to absorb unexpected, multi-year tax bills or pass on these costs to their customers. This creates financial strain, compliance confusion, and a real risk of business failure.

In attempting to Impose this Tax Liability NYSDTF is an Outlier.

Our research shows that no jurisdictions in the country currently impose sales tax on mandated safety compliance services. This makes New York State a national outlier in attempting to impose this liability, placing our contractors and safety consultants at a competitive disadvantage and discouraging best-in-class safety practices.

In conclusion, A.8616/S.____ corrects an arbitrary, unfair and harmful interpretation of New York State Tax by law by NYSDTF that punishes site safety companies for complying with existing site safety laws and regulations. A.8616/S.____ addresses and reverses this unjust action by NYSDTF. The bill promotes public safety, supports small and minority-owned businesses, and restores tax fairness to an industry that is an essential part of New York's City's construction workforce. Accordingly, NYCSA **strongly supports A.8616/S. ____** and urges its swift passage into law.

Respectfully submitted by the New York Construction Safety Alliance (NYCSA)

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