

Date: December 12, 2003
To: All Clients & Closers
From: David Gorenstein, President
Re: Revised Form TP-584, and New Form IT-2663
Payment of Estimated Personal Income Tax

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A non-resident individual, estate or trust transferring fee title to real property in New York State by a deed delivered between the parties to a transfer on and after September 1, 2003 is required to pay estimated personal income tax on the gain, if any, resulting from the transfer. Any personal income tax computed by the taxpayer as being payable on the conveyance has been payable to the New York State Department of Taxation and Finance. The Department issues a receipt that enables recording of the deed.

Section 663, the basis for this procedure, was added to the Tax Law in the State's recent Budget Bill. Its has been amended by Chapter 686 of the Laws of 2003, signed into law by the Governor on October 21. The new legislation, recited as being effective as of September 1, 2003 makes two significant changes to this section.

First, legislation provides that the recording of a deed will not be invalidated and title will not be impaired due to an omission or inaccuracy in Form IT- 2663, the form submitted with the payment of this estimated personal income tax under Section 663, or by reason of a deficiency in the payment of tax under that Section.

Second, every recording officer is now authorized to act as an agent of the State for collection of estimated personal income tax being paid to record a deed. According to the Department of Taxation and Finance at a meeting held in Albany last month, through December 31, 2003 payment of the Section 663 estimated personal income tax can be made either to the State, or to the recording office of the county in which the deed is being recorded. After January 1 payment can only be made to the recording office.

Newly revised forms TP-5849 ("Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax") and IT- 2663 ("Nonresident Real Property Estimated Income Tax Payment Form") have been issued. Form IT-2663 does not provide for payment to the State and the identification on form IT-2663 of a Designated Representative has been removed. Either the forms previously issued or the new forms (TP-584 issue dated 10/03) can be used for a conveyance made in 2003. New forms will be issued for transfers taking place in 2004.

The Department of Taxation and Finance's office of Tax Policy Analysis, Technical Services Division, has issued "Changes to the Procedure for Filing Form IT-2663" at http://www.tax.state.ny.us/pdf/memos/multitax/m03_2lr4li.pdf.

Revised Forms IT- 2663 and TP-584 (10/03), and instructions, can be downloaded at the Department's WEB Site using the following links.

http://www.tax.state.ny.us/pdf/2003/inc/it2663_2003.pdf

http://www.tax.state.ny.us/pdf/2003/inc/it2663i_2003.pdf

http://www.tax.state.ny.us/pdf/2003/property/tp584_1003.pdf

http://www.tax.state.ny.us/pdf/2003/property/tp584i_1003.pdf

Revised Form IT-2663 is not to be used for a closing in any county until it is certain that the local recording office is accepting Form It-2663 and payment of the estimated tax. Until that time, we will continue to submit the earlier issued Form IT-2663 and make payment to the local office of the Department of Taxation and Finance, and charge a service fee for recording in that county. Revised Form TP-584 can now be used for all closings.

Each County Clerk will determine when his or her offices will begin accepting the Section 663 payment. The New York City Register, for example, has not yet put procedures in place.

No substantive change has been made to Form TP-584 (10/03). Reference to a cooperative apartment in the definition of Personal Residence in the Instructions for Schedule D has been deleted so as not to lead the reader to erroneously conclude that estimated tax is payable on a non-resident's transfer of a cooperative unit.

When form IT- 2663 and payment is submitted to a county recorder, delays in processing payments in that office may result in a taxpayer not being timely credited for the payment of estimated tax. The State may waive the penalty for a late payment of estimated tax notwithstanding recording office delay in transmitting a payment to it if the date on which the check was submitted to the recorder can be established. It can be assumed that at least some taxpayers will come to us for proof of the date on which Form IT-2663 and the check were submitted to the county.

Accordingly, we need to retain a copy of Form IT-2663 any check in payment of the tax, list Form It-2663 on our records as being one of the documents sent to the recorder so that we have a record of the date of submission, and whenever possible obtain and retain in the closing file a hard copy or an image of any receipt that can be obtained for the submission of the form and payment.

Note that the State has not provided a procedure under which recording offices are required to provide a receipt and many county recorders will not provide a receipt. A canceled check may be a taxpayer's only evidence of payment.

In no circumstances will a Choice Abstract check be issued for payment of the Section 663 estimated tax. Personal, uncertified checks from the taxpayer or a money order, made payable to NYS Income Tax will continue to be accepted for payment.

That Department also noted in the recent meeting that Section D of Form TP-584 and Form IT-2663 may be executed pursuant to a standard statutory short form power of attorney, so long as the entry for "Tax Matters" is initialed. Power of Attorney Form POA-1 is not required to be used.

Please contact me or refer to the above websites if there is any questions on these procedures.