

Date: May 13, 2004
To: All Clients
From: David Gorenstein
Re: IT-2663

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Ending confusion over deeds from non-resident individuals, estates or trusts in New York

New York State law requires certain sellers of real estate to file a special form IT-2663 at the time of recording a deed, and requires a separate check made payable to The Department of Taxation and Finance be presented when the deed is submitted for recording.

When representing a seller in a real estate transaction in New York State, it is essential to know whether the client is a non-resident individual, estate or trust. If representing such a client, the attorney must first determine whether the client qualifies for one of the exemptions.

Residents of New York State are exempt from the imposition of the estimated tax payment. In addition, the form need not be filed and no estimated tax is required of non-residents under certain circumstances:

- (a) the property is the seller's principal residence,
- (b) the conveyance is a deed in lieu of foreclosure with no added consideration, or
- (c) the seller is a government agency, FannieMae, FreddieMac, GinnieMae, or a private mortgage insurer.

In the case of an exempt seller, there is a check-off on the TP-584 to indicate the seller is exempt.

In cases where the seller is not exempt, the form IT-2663 must be completed and the estimated tax must be paid.

The 2004 version of the IT-2663 is required for all applicable transactions. Earlier form versions are not acceptable. The form and the instructions are available from the New York State Department of Taxation and Finance website at:

http://www.tax.state.ny.us/forms/form_number_order_income.htm

Under the current version of the law and the applicable regulations, the IT-2663 and the separate payment check are to be presented to the recording officer at the time the deed is recorded. An earlier set of regulations created a cumbersome system for making payment to the Department of Taxation and Finance in advance of closing - that system is no longer in effect.

If you have any questions about the IT-2663, please do not hesitate to call our counsel, Joann Prinzivalli, who will be happy to help you.

