



First American Title Insurance Company of New York

**CURRENT DEVELOPMENTS
SPECIAL EDITION
UPDATE**

A continuing series of bulletins issued by email to clients of First American

Current Developments issued July 2, 2003 reported that the recently enacted New York State Budget Bill added Section 663 to the Tax Law requiring non-resident taxpayers to pay estimated personal income tax on the gain, if any, resulting from the sale or transfer of real property in the state. This requirement does not apply to the sale or transfer of a principal residence, a conveyance by a foreclosure deed or a deed in lieu of foreclosure, or a transfer by a governmental agency or a private mortgage insurance company. It is effective as to sales and transfers of fee simple interests in real property on or after September 1, 2003.

The New York State Department of Taxation and Finance has informally advised that the new requirements will be applied only to the transfer of title by a deed and only when a non-resident individual, estate or trust holds record title. It will not apply when an entity such as a corporation, partnership or limited liability company is the transferor, even if a non-resident individual, estate or trust holds an interest in the entity. Transfers of leasehold estates, including leasehold condominiums, cooperative units or controlling interests are not subject to the new procedure.

No deed will be accepted for recording without compliance with the new procedures. A deed executed by an individual, estate or trust will be accepted for recording only when there is submitted to a recording office for each transferor either (a) a certification on Schedule D ("Certification of exemption from the payment of estimated personal income tax") of a revised Form TP-584 (7/03) that the transferor is a resident of New York State or a non-resident exempt from the requirement to pay estimated tax, or (b) Part IV ("Certification for recording of deed") of a new Form IT-2663, stamped by the New York State Department of Taxation and Finance, required when the transferor is a non-resident who has paid the estimated tax or when the transferor has certified that the transfer will not result in a gain for federal income tax purposes or the gain is not required to be recognized under the Internal Revenue Code or a United States Treaty.

Revised Form TP-584 (7/03) ("Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of

Estimated Personal Income Tax”) and new Form IT-2663 (“Application for Certification for Recording of Deed and Nonresident Estimated Income Tax Payment Voucher”), each with instructions, have been issued by the Department of Taxation and Finance. They are posted to the Internet at the following addresses:

http://www.tax.state.ny.us/pdf/2003/property/tp584_703.pdf
http://www.tax.state.ny.us/pdf/2003/property/tp584i_703.pdf.
http://www.tax.state.ny.us/pdf/2003/inc/it2663_2003.pdf and
http://www.tax.state.ny.us/pdf/2003/inc/it2663i_2003.pdf

Form IT-2663, with payment to NYS Income Tax of any estimated tax payment due, may be mailed or delivered to the Department in Albany. It may, alternatively, be walked-in to any of twelve offices of the Department. The office in New York County, for example, is the Taxpayer Assistance Center on the second floor of 86 Chambers Street. There is no provision for payment of the estimated tax to the recording officer.

The Department has informally advised that payment by a certified or bank check will not be required and that payment by a regular check will be acceptable.

The instructions for Form IT-2663 indicate that the Department should be allowed three business days to process and return stamped Part IV to the transferor or its designated representative named on the form. The form may be returned by facsimile if requested by the transferor. It is anticipated, however, that the transferor or its designated representative will obtain a stamped Part IV when Form IT-2663 is walked-in to any of the Department’s twelve walk-in offices.

The Website for the New York State Department of Taxation and Finance states the following as to revised Form TP-584: “Beginning September 1, 2003, this form *must* be used, but it *may* be used now”.

The Department of Finance of the City of New York has advised that City and State transfer tax forms and certain other forms will not be completed on-line in ACRIS, its Automated City Register Information System, until at least December 2003. As noted in Current Developments issued July 2, 2003, requiring forms to be completed on-line was to take effect this September. This change is partly a consequence of the City’s need to integrate final revised Form TP-584 into ACRIS.

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