



**First American Title Insurance Company of New York
CURRENT DEVELOPMENTS
SPECIAL ADDITION**

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

This issue of Current Developments sets forth information newly obtained regarding implementation of revised Form TP-584 (“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”).

As reported in Current Developments issued on July 31, 2003, updated August 5, 2003, new Tax Law Section 663 requires a non-resident transferor that is an individual, estate or trust to pay estimated personal income tax on the gain, if any, resulting from the transfer by deed of real property in New York State on and after September 1, 2003.

A non-resident individual, estate or trust transferring a fee simple interest in real property in New York on and after September 1 which may claim one of the exemptions from the requirement to pay estimated personal income tax set forth on Schedule D of revised Form TP-584 (7/03) must claim the applicable exemption on and sign Schedule D, the “Certification of exemption from payment of estimated personal income tax”.

There are three grounds set forth on Schedule D of TP-584 under which a non-resident transferor may claim an exemption from the requirement to pay estimated tax:

- 1. The property being sold or transferred was used exclusively as the transferor’s principal residence during a certain minimum number of days during the tax year;**
- 2. The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration;
or**
- 3. The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.**

The New York State Department of Finance has determined that Section 663 requires that the owner/mortgagor of the property being foreclosed execute Schedule D to claim the exemption applicable to “a mortgagor conveying the mortgaged property to a mortgagee in foreclosure” It will not accept the signature on Schedule D of either the referee in the

foreclosure action or the mortgagee. It advises that legislation is required to cure this deficiency in the law.

Similarly, the property owner will be required to execute Schedule D of Form TP-584 (or Form IT-2663 where the property owner is not a resident of the State or none of the non-resident exemptions on Schedule D apply) when a deed is being executed by a court appointed person (other than a fiduciary appointed in an estate proceeding), such as a sheriff acting to complete a sheriff's sale or a court ordered transfer. Again, legislation is needed to resolve this issue.

The New York State Department of Taxation and Finance has further determined that the exemption on Schedule D of Form TP-584 for transfers in which an agency or authority of the State of New York is the transferor or transferee does not encompass transfers made by or to municipalities within the state, such as cities, counties, towns, or villages, including transfers to or from such municipally-related entities as Industrial Development Agencies. In such instances, unless the transferor can sign Schedule D as a resident of New York State or as a non-resident entitled to claim a different exemption, the transferor will be required to complete, sign and submit to the Department Form IT-2663 paying estimated tax on any gain (unless gain is not required to be recognized under the IRC or a United States treaty). The Department advises that legislation is required to cure this deficiency in the law.

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