



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

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. It 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, the 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 State Department of Taxation and Finance's Bulletin issued November 4, 2003, at http://www.tax.state.ny.us/pdf/memos/multitax/m03_2_1r_4_1i.pdf:

“Effective immediately, nonresident individuals, estates, and trusts will now be required to file Form IT-2663 with the recording officer and pay any estimated tax due at the time the deed is presented to be recorded. A separate check made out to NYS Income Tax for full payment of the estimated personal income tax due, if any, must be provided. However, if a nonresident has filed a 2003 Form IT-2663 using the prior procedure, and the Department issues a stamped certification for 2003, then the recording officer will accept that stamped certification at the time the deed is presented for recording...”

Newly revised forms 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 IT-2663 (“Nonresident Real Property Estimated Income Tax Payment Form”) are being 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 issue for transfers taking place in 2004.

Revised Form IT-2663 and instructions can be downloaded at the Department’s WEB Site using the following links. Revised Form TP-584 (10/03) is not yet posted.

http://www.tax.state.ny.us/pdf/2003/inc/it2663_2003.pdf
http://www.tax.state.ny.us/pdf/2003/inc/it2663i_2003.pdf

Each County Clerk will determine when his or her offices will begin accepting the Section 663 payments. The New York City Register and the Westchester County Clerk, for example, have not yet put procedures in place. Revised Form IT-2663 should therefore not be used for a closing in any county until it is known that the local recording office is accepting Form IT-2663 and payment of estimated tax.

Note that when Form IT-2663 and a payment of estimated tax is submitted to a county recorder, any delays in processing payments in that office may result in a taxpayer not being timely credited for the payment of estimated tax. A taxpayer is credited for payment of estimated tax only when payment is received by the State. 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.

However, there is no procedure under which recording officers 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.

That Department also noted in a 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.

Michael J. Berey
Senior Underwriting Counsel
No. 58, November 10, 2003
mberey@firstam.com