

Important Notice
Estimated Personal Income Tax on the Sale or Transfer of Real Property by Nonresidents

The personal income tax law has been amended to add a new section 663 which requires nonresidents to pay estimated personal income tax on the gain, if any, from sales or transfers (transfers) of real property located in New York State. The new law applies to transfers of real property occurring on or after September 1, 2003.

As of September 1, 2003, unless the transfer of real property located in New York State is exempt as explained below, nonresident individuals, estates and trusts (nonresident transferors) must file with the Tax Department Form IT-2663, *Application for Certification for Recording of Deed and Nonresident Estimated Income Tax Payment Voucher*, and pay the estimated tax due, if any. The amount of the estimated tax is determined by multiplying the gain by the highest applicable rate of New York State personal income tax in effect for the taxable year. Form IT-2663 must be filed regardless of whether a gain or loss is computed. Upon receipt of Form IT-2663 and the tax due, if any, the Tax Department will return to the nonresident transferor a stamped certification indicating that the filing requirements of new section 663 have been met. This certification must be submitted to the recording officer at the time the deed is to be recorded.

No deed in New York may be recorded by any recording officer unless **each** nonresident transferor has received a certification from the Commissioner of Taxation and Finance that estimated tax, if any, has been paid on such transfer or, has signed a certification on Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate and Certification of Exemption from the Payment of Estimated Tax*, that the provisions of section 663 of the Tax Law do not apply to the transfer.

Nonresident transferors may take credit on their personal income tax returns for the estimated tax paid. If the estimated tax paid exceeds the nonresident transferor's actual tax liability for the year, a refund will be issued. Estimated tax payments made with Form IT-2663 cannot be refunded prior to the filing of a personal income tax return.

A nonresident transferor is exempt from the payment of estimated personal income tax on the transfer of real property under section 663 of the Tax Law if:

- the real property being transferred is used exclusively as a principal residence by the transferor within the meaning of section 121 of the Internal Revenue Code (IRC);¹

¹A principal residence means a person's main home within the meaning of section 121 of the IRC. This is the home for which a person is allowed to exclude all or a portion of the gain for federal income tax purposes. Usually the home a person lives in most of the time is his or her main home and can be, but is not limited to, a house, houseboat, mobile home, cooperative apartment or condominium.

- the transferor is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration; or
- 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, or the Government National Mortgage Association, or a private mortgage insurance company.

When one of the above exemptions applies, the nonresident transferor must complete Schedule D on Form TP-584. This form must be presented to the recording officer at the time the deed is to be recorded.

New York State resident individuals, estates and trusts must also complete Schedule D on Form TP-584 to certify that they are not subject to the provisions of new section 663 of the Tax Law.

Neither Form IT-2663 nor Schedule D of Form TP-584 need to be completed if:

- the interest being transferred is not a fee simple interest in real property; or
- the real property is being transferred by anyone or any entity other than an individual, estate or trust.

However, a transferor may be required to complete Schedules A, B and C of Form TP-584 to satisfy the transfer tax and mortgage tax requirements.

To obtain a copy of Form IT-2663 or TP-584, call 1 800 462-8100 or download a copy from our Web site at www.nystax.gov .