

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

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Real Estate Transfer
Tax and Real Property
Transfer Gains Tax
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TP-584 Filing Requirements

The purpose of this memorandum is to provide guidance as to when Form TP-584, "New York State Combined Gains Tax Affidavit, Real Estate Transfer Tax Return, Credit Line Mortgage Certificate", is required to be filed when presenting an instrument to a county clerk or city register for recording.

The statutory provisions, which provide the authority to require the filing of such form, are as follows:

1. Real Estate Transfer Tax (transfer tax) - Article 31 of the Tax Law

Section 1409(a) of the Tax Law states in pertinent part:

"A joint return shall be filed by both the grantor and the grantee for each conveyance whether or not a tax is due thereon. The return shall be filed with the recording officer before the instrument effecting the conveyance may be recorded "

Section 1410(b) of the Tax Law states:

"A recording officer shall not record an instrument effecting a conveyance unless the return required by section fourteen hundred nine of this article has been filed and the real estate transfer tax due, if any, shall have been paid as provided in this section."

Section 1401(e) of the Tax Law states:

""Conveyance" means the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (i) the sum of the

term of the lease or sublease and any options for renewal exceeds forty-nine years, (ii) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii) the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the internal revenue code."

2. Real Property Transfer Gains Tax (gains tax) - Article 31-B of the Tax Law

Section 1447(1)(f)(1) of the Tax Law states:

"A county clerk or register of a county shall not record or accept for record any conveyance, other than a conveyance by a court of appropriate jurisdiction, or an officer thereof, resulting from an action to foreclose a mortgage, of real property in New York state, unless accompanied by:

(i) the statement of tentative assessment of the amount of tax or statement that no tax is due provided pursuant to, subdivision two of this section, together with the payment of the tentative assessment of the amount of tax, if any, or

(ii) an affidavit, or other form prescribed by the state tax commission, fully executed under penalty of perjury, affirming (A) that the transfer of real property is exempt under subdivision seven of section fourteen hundred forty-three of this article or (B) that the transfer is a transfer of real property where the consideration is less than five hundred thousand dollars and is not partial or successive transfer of real property or (C) that the transfer is a transfer of real property by tenants in common, joint tenants or tenants by the entirety where the aggregate consideration is less than five hundred thousand dollars or (D) that the conveyance is not a transfer of real property within the meaning of subdivision seven of section fourteen hundred

forty of this article, together with documents supporting such claim, or (E) that the transferor is exempt under paragraph (a) or (b) of subdivision three of section fourteen hundred forty-three of this article or (F) that the transfer of real property is exempt under subdivision two of section fourteen hundred forty-three of this article.

Section 1447 (1)(f)(3) states:

"The term "conveyance of real property", as used in this subdivision, shall mean conveyance as defined in subdivision three of section two hundred ninety of the real property law, except it shall not include an instrument creating, modifying, extending, spreading, consolidating, assigning, transferring, releasing or satisfying a mortgage, a mortgage subordination agreement, a mortgage severance agreement, or an instrument siren to perfect or correct a recorded mortgage; an affidavit of title; a release of lien of tax pursuant to the tax law or the internal revenue code of nineteen hundred fifty-four, as amended; or a power of attorney entitled to be recorded under section two hundred ninety-four of the real property law."

Real Property Law - Article 9

Section 290.3 of the Real Property Law states:

"The term "conveyance" includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument postponing or subordinating a mortgage lien; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property."

3. Mortgage Recording Taxes - Article 11 of the Tax Law

Section 253-b.3 of the Tax Law provides the authority to promulgate regulations for the enforcement and administration of taxes imposed on the recording of a credit line mortgage. Sections

404.3 and 404.4 of the Mortgage Tax Regulations { Subchapter E, Chapter III of 20 NYCRR) require the filing of a Credit Line Mortgage Certificate upon the recording of an instrument effecting the sale or transfer of a fee simple interest in real property.

4. Filing Form TP-584

Based on the foregoing statutory and regulatory authority, Form TP-584 must be filed whenever any one of the following conditions is met:

- 1) an instrument effecting a "conveyance" of real property, as such term is defined under section 1401(e) of the transfer tax, is presented for recording;
- 2) an instrument effecting a "conveyance" as such term is defined under section 1447(1)(f)(3) of the gains tax, is presented for recording; or
- 3) an instrument effecting the sale or transfer of a fee simple interest in real property is presented for recording.

However, where the gains tax pre-transfer audit procedure { See Publication 589, Pre-Transfer Audit Procedures Real Property Transfer Gains Tax } is required for any transfer of real property, Form TP-584 may not be used to satisfy the filing requirements imposed by the gains tax.

The following are examples of instruments that typically require a Form TP-584 when presented for recording:

- S Deeds
- S Deeds to Standing Timber
- S Rights of Way & Easements
- S Water Rights Agreements
- S Notice of Appropriations
(taking by Eminent Domain)
- S Leases {including Oil & Gas}
- Surrender of Leases
- Assignment and Release
of Leases (See explanation #A below)
- Land Contracts
- Options
- Bills of Sale
- Cemetery Deeds (See explanation #B below)
- Boundary Line Agreements (See explanation #C below)
- Fence Line Agreement (See explanation #D below)

- A) The Tax Department does not require a Form TP-584 to be filed if a collateral assignment of leases and/or rents is recorded either with the payment of mortgage recording taxes or with a sworn statement as required in section 255 of Article 11 of the Tax Law (255 affidavit). However, if a collateral assignment of leases and/or rents is not accompanied by the payment of mortgage recording taxes or a 255 affidavit, Form TP-584 would be required for such recording. Form TP-584 would be required upon the release of a collateral assignment of leases and/or rents if a Form TP-584 was required upon the original recording of such collateral assignment of leases and/or rents.
- B) The definition of "real property" under the transfer tax specifically excludes "rights to sepulture". However, such exclusion is not found under the gains tax. Accordingly, the recording of cemetery deeds would require a Form TP-584 for gains tax purposes but not for purposes of the transfer tax.
- C) A boundary line agreement would require two Forms TP-584 if such agreement results in both parties to the transaction transferring real property. In such a case, each party is the transferor/grantor of the real property he is transferring to the other party (transferee/grantee).
- D) A fence line agreement would require a Form TP-584 if a conveyance results from the terms of such agreement.

The following are examples of instruments that typically do not require a Form TP-584 when presented for recording:

- S Wills
- S Assignments of Proceeds
- S Declarations of Condominium
- S Declarations of Trust
- S Certified Copies of Orders or Judgements (which are requested to be recorded in a Book of Deeds).