

REGULATORY IMPACT STATEMENT

DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; Section 663 of the Tax Law, which was added by part V3 of Chapter 62 of the Laws of 2003 and amended by Part P of Chapter 686 of such Laws, provides that the Commissioner shall promulgate rules and regulations implementing the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers; and section 697(a) provides the authority for the Commissioner to make such rules and regulations that are necessary to enforce the personal income tax.

2. Legislative objectives: The purpose of these amendments is to implement the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers, contained in section 663 of the Tax Law. Section 663 was added by part V3 of Chapter 62 of the Laws of 2003, and amended by Part P of Chapter 686 of such Laws.

3. Needs and benefits: New section 663(h) of the Tax Law provides that the Commissioner shall promulgate rules and regulations implementing the estimated tax on the sale or transfer of real property within New York State by nonresident taxpayers. The adoption of this regulation will satisfy that requirement. The rule will benefit taxpayers by providing guidance about the new statutory requirements by clarifying (1) who the new law applies to, (2) what sales or transfers are covered by the law, and (3) how the exceptions to the requirements apply to taxpayers.

Section 663(e) of the Tax Law provides that every recording officer in New York State shall act as an agent of the Commissioner for purposes of collecting the estimated personal income tax, if any, shown to be payable upon the form prescribed pursuant to section 663(b). The section also provides that the Commissioner, by regulation, shall prescribe one or more methods for the recording officer's collection of such estimated tax and the

due dates for the recording officer's remittance to the Commissioner of any funds collected and any returns filed with such recording officer. To meet the statutory directives, the proposal requires that the recording officer must collect a payment which is separate from any other payments made at the time the deed is recorded or accepted for recording, and must remit any funds collected and returns filed within three business days after receipt of the funds and returns. The requirement for the separate payment will benefit any taxpayers subject to paying the estimated tax by ensuring that their estimated tax payments are properly recorded and credited to their estimated personal income tax account. The requirement that the funds and returns be sent by the recording officer to the Department within three business days will benefit taxpayers by ensuring that the money is properly credited to their accounts on a timely basis so that it may be matched to their personal income tax return at year end. If the money is not properly credited on a timely basis, the processing of the taxpayer's return will be delayed. The proposed regulatory requirements will help prevent any unnecessary delays or backlogs in processing.

This rule was adopted as an emergency measure on November 12, 2003 and readopted as an emergency measure and proposed as a permanent rule on January 22, 2004. The permanent rule, proposed on January 22, will become effective when the Notice of Adoption is published in the State Register. Because the earliest date that the Notice of Adoption can be published is April 14, 2004, and the first emergency readoption will expire on March 22, 2004, this second emergency readoption is necessary to continue the rule until the adoption becomes effective.

4. Costs: There are no fiscal or nonfiscal costs related to the promulgation of the regulation to the State, to this agency, to local governments, or to regulated parties beyond those imposed by the statute. This analysis is based on a review of the statutory provisions and on discussions among personnel from the Department's Technical Services Bureau, Office of Counsel, Division of Tax Policy Analysis, Bureau of Fiscal Management, and Planning and Management Analysis Bureau.

5. Local government mandates: The requirements imposed on local recording officers to act as agents of the Commissioner and collect and remit estimated tax forms and payments are imposed by section 663 of the Tax Law rather than by this regulation. The regulation provides the separate payment method for collection of tax and the due date of three business days, discussed above.

6. Paperwork: Since the requirement for nonresident taxpayers to estimate the tax upon the sale or transfer of real property within New York State was established by new section 663 of the Tax Law, any paperwork required is attributable to the statute and not the regulation.

7. Duplication: There are no relevant rules which are duplicated, overlapped, or in conflict with the regulation.

8. Alternatives: Because the regulation is specifically required by sections 663 (e) and 663(h) of the Tax Law, no significant alternative to promulgating the regulation was considered.

Alternative ways to meet the statutory directives regarding the method of collection and due dates were considered. The separate payment method and the due date of three business days were discussed with the County Clerks' Association, and were determined to be the best policies to satisfy the needs of the recording officers, taxpayers, and the Department in response to section 663 of the Tax Law.

To allow for a transition period for the procedure provided by Chapter 686, the Department's policy and this emergency action provide that the prior procedure can be used for sales with a date of sale or transfer on or before December 31, 2003.

9. Federal standards: The rule does not exceed any federal minimum standard for the same or similar subject area.

10. Compliance schedule: Section 663 of the Tax Law, which imposes new requirements on nonresident taxpayers and local recording officers, applies to sales or transfers of real property within New York State on or

after September 1, 2003. This effective date was set by Part V3 of Chapter 62 of the Laws of 2003. Section 663 was amended by Part P of Chapter 686 of the Laws of 2003 and the September 1, 2003 effective date was retained in this amendment. The schedule for parties to comply with the regulation is affected by the fact that Chapter 686 became law after September 1, 2003 and changed the procedure for taxpayers. Under Chapter 62, taxpayers were required to file the estimated tax form and pay any tax due directly to the Department. A regulation was adopted as an emergency measure on August 26, 2003 reflecting section 663 as in Chapter 62. Chapter 686 changed the requirement so that taxpayers are now required to file and pay any tax due with the recording officer at the time the deed is recorded or accepted for recording. Because the original effective date was retained by the later amendments, a transitional provision is included in this proposal to allow taxpayers to continue to use the prior procedure as an alternative for sales of real estate with a date of sale or transfer on or before December 31, 2003. To provide the recording officers adequate time to prepare, a meeting was held with the County Clerks' Association to discuss the new procedures and to receive their input regarding the proposed requirements and advance copies of forms and instructions were provided to the recording officers. A technical memorandum has also been issued to notify taxpayers and real estate professionals about the changes.