New York State Department of Taxation and Finance

Instructions for 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

TP-584-I
(1/09)

Purpose of Form TP-584

Form TP-584 must be used to comply with the filing requirements of the real estate transfer tax (Tax Law, Article 31), the tax on mortgages (Tax Law, Article 11), as it applies to the *Credit Line Mortgage Certificate,* and the exemption from estimated personal income tax (Tax Law, Article 22), as it applies to the sale or transfer of real property or cooperative units under Tax Law, section 663(a).

Since this form is used to satisfy the filing requirements of three distinct taxes, please rely on the definition of terms and instructions as they pertain to each schedule.

Who must file

Form TP-584 must be filed for each conveyance of real property from a grantor/transferor to a grantee/transferee.

It may not be necessary to complete all the schedules on Form TP-584. The nature and condition of the conveyance will determine which of the schedules you must complete. Please see the specific instructions for completing **each schedule**.

Note: Public utility companies, regulated by the Public Service Commission, and governmental agencies that are granted easements and licenses for consideration of less than $500 may use Form TP-584.2, *Real Estate Transfer Tax Return for Public Utility Companies' and Governmental Agencies' Easements and Licenses,* to record these conveyances. For purposes of Form TP-584.2, a governmental agency is the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions, or any public corporation, including a public corporation created pursuant to an agreement or compact with another state or Canada.

A conveyance of an easement or license to a public utility company, where the consideration is $2 or less and is clearly stated as actual consideration in the instrument of conveyance, does not require the filing of Form TP-584 or Form TP-584.2.

When and where to file

File Form TP-584 with the recording officer of the county where the real property being conveyed is located, no later than the fifteenth day after the delivery of the instrument effecting the conveyance. However, if the instrument effecting the conveyance will not be recorded, or will be recorded later than the time required to file Form TP-584 and to pay any real estate transfer tax, file Form TP-584 and pay any real estate transfer tax due no later than the fifteenth day after the delivery of the instrument effecting the conveyance, directly with:

NYS TAX DEPARTMENT
RETT RETURN PROCESSING
PO BOX 5045
ALBANY NY 12205-5045

Private delivery services — If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return and pay tax. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services.* See *Need help?* on page 7 of these instructions for information on ordering forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, address your return to: NYS Tax Department, Misc Tax/RETT Unit, W A Harriman Campus, Albany NY 12227.

Payment of estimated personal income tax

Nonresident individuals, estates, and trusts must comply with the provisions of section 663 of the Tax Law, estimating the personal income tax on the gain, if any, from the sale or transfer of certain real property, or shares of stock in a cooperative housing corporation, in connection with the grant or transfer of a proprietary leasehold by the owner of the shares, where the cooperative unit represented by such shares is located in New York State.

Form IT-2663

Use Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form,* to compute the gain (or loss) and pay the estimated personal income tax due from the sale or transfer of certain real property. You will need to present Form IT-2663 and pay the full amount of estimated personal income tax due, if any, to the recording officer at the time the deed is presented for recording.

Form IT-2664

Use Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form,* to compute the gain (or loss) and pay the estimated personal income tax due from the sale or transfer of the cooperative unit. You will need to file Form IT-2664 and pay the full amount of estimated personal income tax due, if any, to the NYS Tax Department within 15 days of the delivery of the instrument effecting the sale or transfer of the cooperative unit.

Schedule D

The requirement for payment of estimated personal income tax under Tax Law, section 663 does **not** apply to individuals, estates, or trusts who are **residents** of New York State at the time of the sale or transfer, however residents must complete Form TP-584, Schedule D, *Certification of exemption from the payment of estimated personal income tax.* See *Who must complete Schedule D,* on page 5 of these instructions for more information.

In addition, the requirement may not apply to certain sales or transfers even if the individual, estate, or trust is a nonresident at the time of the sale or transfer. An exemption may be allowed if any of the following apply:

- The real property or cooperative unit being sold or transferred is a principal residence of the transferor/seller within the meaning of section 121 of the Internal Revenue Code (IRC).

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- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in lieu of foreclosure with no additional consideration.
- 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.

To claim any of the above exemptions, nonresidents of New York State must complete Schedule D. See *Who must complete Schedule D,* on page 5 of these instructions for more information.

Schedule D does not need to be completed if the interest being transferred is anything other than a fee simple interest in real property or a cooperative unit, or the property is being transferred by anyone or any entity other than an individual, estate, or trust. However, Schedules A, B, and C must still be completed to satisfy the transfer tax and mortgage tax requirements.

Instructions for Schedule A

Name and address box

Print or type the names, addresses, and social security or employer identification numbers of the grantor and grantee as they appear in your deed, lease, or other instrument that conveys the interest in real property. However, if the conveyance is pursuant to a mortgage foreclosure or any other action governed by the Real Property Actions and Proceedings Law, the defaulting mortgagor or debtor is the grantor. If additional space is needed, please attach a schedule to Form TP-584 setting forth the names, addresses, and social security or employer identification numbers of all the grantors and grantees.

Location and description of property conveyed

Give the location and description of the interest in real property being conveyed by giving the tax map designation and address as they appear in your deed, lease, or other instrument that conveys the interest in real property. You need not include a tax map designation if the property being conveyed is an individual cooperative apartment. Also include the name of the city or village, town, and county where the property conveyed is located.

Type of property conveyed

Indicate by checking the appropriate box whether the property conveyed is a one-, two-, or three-family house, a residential condominium unit, a residential cooperative apartment, vacant land, or other type of property. If you are conveying a one-, two-, or three-family house, a residential cooperative apartment, or a residential condominium unit, you may be entitled to the continuing lien deduction. See page 3 of these instructions for more information.

Condition of conveyance

Indicate the condition of conveyance by checking all the condition(s) that apply. If items *e*, *f*, or *g* are checked, Form TP-584.1, *Real Estate Transfer Tax Return Supplemental Schedules,* must be attached to Form TP-584, with the appropriate schedule completed.

Date of conveyance

Indicate the date the instrument effecting the conveyance was delivered from the grantor to the grantee. The date of the instrument is presumed to be the date of delivery of the instrument.

Percentage of real property conveyed which is residential real property

Indicate the percentage of the entire real property conveyed that is **residential real property**. (See *Imposition of additional tax,* on page 4, for a definition of the term *residential real property*).

Instructions for Schedule B

Imposition of tax

A real estate transfer tax (Part I of this schedule) is imposed on each conveyance at the time the instrument effecting the conveyance is delivered by a grantor to a grantee when the consideration or value of the interest conveyed exceeds $500. The tax is computed at a rate of two dollars for each $500 of consideration or fractional part thereof.

An additional tax (Part II of this schedule) is imposed on the conveyance of residential real property where the consideration for the entire conveyance is one million dollars or more. For more information, see *Imposition of additional tax* on page 4 of these instructions.

Definition of terms for the real estate transfer tax

1. *Person* means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.
2. *Controlling interest* means (a) in the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of such corporation, or 50% or more of the capital, profits, or beneficial interest in such voting stock of such corporation, and (b) in the case of a partnership, association, trust, or other entity, 50% or more of the capital, profits or beneficial interest in such partnership, association, trust, or other entity.
3. *Real property* means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements, or hereditaments, including buildings, structures, and other improvements thereon, which are located in whole or in part within the state of New York. It does not include rights to sepulture.
4. *Consideration* means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It includes the cancellation or discharge of an indebtedness or obligation. It also includes the amount of any mortgage, purchase money mortgage, lien, or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.
   a) In the case of a creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration includes, but is not limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew and the value of rental or other payments attributable to the exercise of any option to renew.
   b) In the case of a creation of subleasehold interest, consideration includes, but is not limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew and the value of rental or other payments attributable to the exercise of any option to

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renew, less the value of the remaining prime lease rental payments required to be made.

c) In the case of a transfer or an acquisition of a controlling interest in any entity that owns real property, consideration means the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.

d) In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration does not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

e) In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration includes a proportionate share of the unpaid principal of any mortgage(s) on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. This amount is determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which is the number of shares of stock in the cooperative housing corporation being conveyed in connection with the grant or transfer of the proprietary leasehold, and the denominator of which is the total number of shares of stock in the cooperative housing corporation.

5. *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 includes the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds 49 years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. The conveyance of real property shall not include a conveyance pursuant to devise, bequest, or inheritance; 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 the Tax Law or the IRC.

6. *Interest in the real property* includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits, or other income derived from real property. It also includes an option or contract to purchase real property. It does not include a right of first refusal to purchase real property.

7. *Grantor* means the person making the conveyance of real property or interest therein, or where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest, respectively.

8. *Grantee* means the person who obtains real property or any interest therein as a result of a conveyance.

9. *Fair market value* means the amount a willing buyer would pay a willing seller for the real property without deducting mortgages or other liens that the property may be taken subject to as part of the sale or transfer.

Real property situated partly within and partly outside the state

When real property conveyed is situated partly within and partly outside the state of New York, the consideration subject to tax is the allocated portion of the total consideration attributable to the property situated within the State of New York.

A statement signed by both the grantor and grantee must be attached to Form TP-584 setting forth the total consideration for the conveyance and describing the method used to apportion the consideration to the real property situated within the state of New York.

Continuing lien deduction

Tax Law, section 1402 provides that in the case of (1) a conveyance of a one-, two-, or three-family house and an individual residential condominium unit, or an interest therein or (2) conveyances where the consideration is less than $500,000, the taxable consideration shall exclude the value of any lien or encumbrance remaining thereon at the time of the conveyance.

In addition, section 1405-B provides that in the case of a resale of an individual residential cooperative unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance.

Examples:

1) A *purchases a one-family residence from* B *for a total consideration of $150,000 ($100,000 in cash and the assumption of* B*'s existing mortgage of $50,000). Since the existing mortgage which is being assumed would constitute a continuing lien, in determining the taxable consideration for real estate transfer tax (line 3 of Form TP-584, Schedule B)* A *can deduct the amount of the mortgage assumed ($150,000 – 50,000 = $100,000). Consequently, the tax is not computed on the gross consideration, but rather on gross consideration less the continuing lien (that is, mortgage assumed).*

2) A *commercial building is sold to* A *for $725,000, comprised of $400,000 in cash and the assumption by* A *of an existing $325,000 mortgage. Since the consideration for the conveyance exceeds $500,000, the transfer tax must be computed on $725,000, and the continuing lien deduction is not applicable.*

If a conveyance is pursuant to or in lieu of an action to foreclose a mortgage, lien, or other security interest, the amount of the continuing lien deduction **does not include** the amount of the debt secured by that mortgage, lien, or other security interest, which is the subject of the conveyance.

Conveyance of a leasehold grant

The consideration paid to the grantor for the grant of a taxable lease is the present value of the right to receive the net rental payments for the term of the lease.

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A discount rate equal to 110% of the federal long-term rate compounded semiannually, that was in effect 30 days prior to the date of transfer, is required to be used in determining the present value of the right to receive net rental payments for transfer tax purposes. If the taxpayer establishes (a) that a discount rate greater than 110% of the federal long-term rate is appropriate in his or her particular circumstances, and (b) that using a discount rate equal to 110% of the federal long-term rate results in a computation of consideration that exceeds the fair market value of the real property subject to the lease or sublease, the Tax Department will allow the use of a discount rate that results in a computation of consideration that is equal to the fair market value of such real property.

For a lease created for a term of less than 49 years that contains an option to purchase the real property, net rental payments for periods that occur after an option is no longer exercisable are not included in the calculation of consideration.

Transfer or acquisition of a controlling interest

A transfer of a controlling interest is deemed to have occurred when a grantor transfers a controlling interest to one or more grantees within a **three**-year period.

An acquisition of a controlling interest is deemed to have occurred when a grantee acquires a controlling interest from one or more grantors within a **three**-year period.

Example: A *acquires a 10% interest in Partnership XYZ, which owns New York real property, from* X *in December 1999. In March 2001,* A *acquires an additional 25% interest in Partnership XYZ from* X*. In January, 2002,* A *acquires from* Y *a 25% interest in Partnership XYZ. Since* A *acquired a total of 50% or more of the partnership interest in Partnership XYZ within a* ***three-year period,*** A *is deemed to have acquired a controlling interest. Therefore, a conveyance of real property by* X *and* Y *has occurred and* X *and* Y *will be liable for the payment of real estate transfer tax on their respective transfers of 35% and 25% interests.*

Conveyance pursuant to a mortgage foreclosure

A conveyance pursuant to a mortgage foreclosure or any other action governed by the provisions of the Real Property Actions and Proceedings Law, such as the enforcement of a mechanic's lien pursuant to the Lien Law, Article 3, is subject to tax.

Form TP-584.1, Schedule E, Part I must be completed and attached to Form TP-584 in the case of such conveyances.

Conveyance to a mortgagee or lienor in lieu of foreclosure

A conveyance by a defaulting mortgagor or debtor to the mortgagee or lienor, or its agent, nominee or any entity owned in whole by that mortgagee or lienor, in lieu of an action to foreclosure a mortgage or lien, in exchange for cancellation of the debt secured by the mortgage or lien is subject to tax.

Form TP-584.1, Schedule E, Part II must be completed and attached to Form TP-584 in the case of such conveyances.

Conveyance in lieu of or pursuant to a secured party's enforcement of a lien

A conveyance in lieu of or pursuant to a secured party's enforcement of a lien, security interest, or other rights on or in shares of stock in a cooperative housing corporation and/or associated proprietary lease(s), upon default by a debtor is subject to tax.

Form TP-584.1, Schedule E, Part III must be completed and attached to Form TP-584 in the case of such conveyances.

A conveyance in lieu of or pursuant to a secured party's enforcement of a lien, security interest, or other rights on or in shares of stock, partnership interests, or other instruments, upon default by a debtor (that is, the transfer or acquisition of a controlling interest in an entity with an interest in real property), is subject to tax.

Form TP-584.1, Schedule E, Part IV must be completed and attached to Form TP-584 in the case of such conveyances.

Conveyance which consists of a mere change of identity or form of ownership or organization

Tax Law, section 1405(b)6 provides an exemption from the real estate transfer tax to the **extent** a conveyance consists of a mere change of identity or form of ownership or organization where there is no change in beneficial interest.

Form TP-584.1, Schedule F must be completed and attached to Form TP-584 in the case of such conveyances.

Conveyance for which credit for tax previously paid will be claimed

1. A grantor will be allowed a credit against the tax due on the conveyance of real property to the extent the tax was paid by the grantor on a prior leasehold grant of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by the grantor.

   Form TP-584.1, Schedule G, Part I must be completed and attached to Form TP-584 to support any credit claimed.

2. A credit will be allowed upon the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, provided the first conveyance of shares of stock takes place within 24 months from the conveyance of the real property to the cooperative housing corporation. The credit is limited to the proportionate part of the tax paid when the real property was conveyed to the cooperative housing corporation, to the extent the conveyance would have otherwise effectuated a mere change of identify or form of ownership of the property and not a change in the beneficial ownership.

Form TP-584.1, Schedule G, Part II, must be completed and attached to Form TP-584 to support any credit claimed.

Who must pay the real estate transfer tax

The real estate transfer tax is to be paid by the grantor. However, if the grantor fails to pay the transfer tax at the time required or if the grantor is exempt from the tax, the grantee shall have the duty to pay the tax.

In the case where the grantee has the duty to pay the transfer tax because the grantor has failed to pay, the tax becomes the joint and several liability of the grantor and the grantee.

Imposition of additional tax

An additional tax is imposed on each conveyance of residential real property or interest therein where the consideration for the entire conveyance is one million dollars or more. *Residential real property* means the following premises that are or may be used in whole or in part as a personal residence at the time of conveyance: a one-, two-, or three-family house; an individual residential condominium unit; a residential cooperative apartment. The rate of tax is one percent of the consideration or part thereof attributable to the residential real property.

The additional tax is to be paid by the grantee at the same time and in the same manner as the real estate transfer tax. If

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the grantee is exempt from tax, the grantor will have the duty to pay the additional tax.

Examples:

1) A *conveys to* B *a* ***three-family house*** *for a consideration of $1,000,000. Since the three-family house constitutes residential real property, the additional tax at a rate of one percent is imposed on the conveyance.*
2) A *conveys to* B *a two-story building which has a commercial business on the first level and a residence on the second level for a consideration of $1,500,000. Since the real property includes a* ***one-family*** *residence, the additional tax at a rate of one percent is imposed on the proportionate amount of consideration attributable to the residential real property.*
3) *A sponsor of a condominium plan conveys to X corporation three* ***residential*** *condominium units. The consideration paid for Unit 1 is $750,000. The consideration paid for Unit 2 is $900,000, and the consideration paid for Unit 3 is $1,250,000. Since the consideration paid for Unit 3 is one million dollars or more, the additional tax is imposed on the conveyance of that unit. However, the additional tax does not apply to Units 1 or 2.*

Penalties

Any grantor or grantee failing to file a return or to pay any tax within the time required shall be subject to a penalty of 10% of the amount of tax due plus an interest penalty of 2% of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or the tax became due. However, the interest penalty shall not exceed 25% in the aggregate.

If the Commissioner of Taxation and Finance determines that such failure or delay was due to reasonable cause and not due to willful neglect, the commissioner shall remit, abate, or waive all of the penalty and the interest penalty.

Interest

Daily compounded interest will be charged on the amount of the tax due not paid within the time required.

If it is determined that the tax has been overpaid, and Form TP-592.2, *Claim for Refund,* is submitted within two years from the date of payment, interest shall be allowed and paid on the refund at the rate set pursuant to Tax Law, section 1416.

Line instructions for Schedule B

Part I

Line 1 — Enter the amount of consideration. If in Schedule A, items *e*, *f*, or *g* were checked, complete the applicable Schedule E, F, or G of Form TP-584.1, that must be attached to Form TP-584. If you are claiming a total exemption from tax, check the ***Exemption claimed*** box. Do not complete lines 2 through 6. Instead, go to Part III on page 2.

Line 2 — Enter continuing lien deduction if applicable (see page 3 of these instructions).

Line 5 — Enter the amount of tax credit claimed. Complete and attach a copy of Form TP-584.1, Schedule G, along with a copy of the original TP-584 (previously filed) and proof of payment to support the credit claimed.

Part III

Check the appropriate box(es) if you are claiming a total exemption from the transfer tax.

Instructions for Schedule C

Who must complete Schedule C

The *Credit Line Mortgage Certificate* must be completed and filed for all transfers of a fee simple interest in real property. Please check the appropriate box in Schedule C if this schedule is required.

Signatures required for Schedules A, B, and C

Both the grantor(s) and the grantee(s) must sign Form TP-584 on page 3. If there is not adequate space for all persons to sign, a separate signature sheet may be used and attached to Form TP-584. A separate signature area is provided on page 4 of Form TP-584 for the information contained in Schedule D.

Instructions for Schedule D

Note: A separate signature area is provided for Schedules A, B, and C on page 3 of Form TP-584. The signature area on page 3 of Form TP-584 does not apply for purposes of Schedule D.

Who must complete Schedule D

This schedule is to be executed upon the sale or transfer of a fee simple interest in real property or a cooperative unit located in New York State by an individual, estate, or trust claiming exemption from the estimated personal income tax provisions under Tax Law, section 663.

New York State residents — If you are a resident of New York State at the time of the sale or transfer, you must complete Part I of Schedule D (see page 6 of these instructions).

New York State nonresidents — If you are a nonresident of New York State at the time of sale or transfer, you must complete Part II of Schedule D (see page 7 of these instructions).

Multiple transferors/sellers

Each grantor/transferor listed in Schedule A of Form TP-584 (or an attachment to Form TP-584) who does not meet the requirements to claim exemption from the payment of estimated personal income tax as stated in Part I or Part II of Schedule D must either:

- for **sale or transfer of real property,** present Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form,* and pay the full amount of estimated personal income tax due, if any, to the recording officer at the time the deed is presented for recording; **or**
- for **sale or transfer of a cooperative unit,** file Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form,* and pay the full amount of estimated personal income tax due, if any, to the NYS Tax Department within 15 days of the delivery of the instrument effecting the sale or transfer of the cooperative unit.

Real property situated partly within and partly outside New York State — When the real property being sold or transferred is situated partly within and partly outside of New York State, only the property situated inside New York State is subject to the requirements of Tax Law section 663.

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Definition of terms for Schedule D

Transferor/seller means the individual, estate, or trust listed as a grantor/transferor on Form TP-584, Schedule A (or an attachment to Form TP-584) making:

- the sale or transfer of a fee simple interest in real property, or
- the sale, conveyance, or other disposition of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner of the shares, where the cooperative unit represented by such shares is located in New York State.

Sale or transfer of real property means the change of ownership of a fee simple interest in real property by any method.

Sale or transfer of a cooperative unit means the sale, conveyance or other disposition of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold.

Cooperative housing corporation means a corporation that has only one class of stock, that entitles the shareholder to live in a house or an apartment (cooperative unit) in a building or on property owned or leased by the corporation. Housing cooperatives can be, but are not limited to single-family homes, duplexes, townhouses, apartments, dormitories, land subdivisions with sites and utilities, mobile home parks, and marinas.

Cooperative unit means the physical space represented by shares of stock in a cooperative housing corporation in connection with a proprietary leasehold.

Proprietary leasehold means an agreement between a cooperative tenant-stockholder and the cooperative housing corporation that defines the rights and obligations of each party regarding use and occupancy of the cooperative unit.

Principal residence means your main home within the meaning of IRC section 121 and for which you can exclude the gain for federal income tax purposes. Usually the home you live in most of the time is your main home and can be, but is not limited to: a house, houseboat, mobile home, condominium, or cooperative apartment.

New York State *resident* and *nonresident* defined

You may have to pay personal income tax as a New York State resident even if you are not considered a resident for other purposes. For personal income tax purposes, your resident status depends on where you are domiciled and where you maintain a permanent place of abode.

In general, your *domicile* is the place you intend to have as your permanent home. Your domicile is, in effect, the **state** where your permanent home is located. It is the place you intend to return to whenever you may be away (as on vacation abroad, business assignment, education leave, or military assignment).

You can have only one domicile. Your domicile is not changed until you can demonstrate that you have abandoned your previous domicile and established a new permanent domicile.

If you move to a new location but intend to stay there only for a limited amount of time (no matter how long), your domicile does not change.

A *permanent place of abode* is a residence (a building or structure where a person can live) you permanently maintain, whether you own it or not, and usually includes a residence your husband or wife owns or leases.

Resident individual

For purposes of estimated personal income tax under Tax Law, section 663, you are a New York State resident if at the time of the sale or transfer of real property or cooperative unit:

a) Your domicile is New York State; **or**

b) Your domicile is **not** New York State, but you maintained a permanent place of abode in New York State for more than 11 months of the tax year and have spent **184 days or more** in New York State during the tax year. However, if you are a member of the armed forces and your domicile is not New York State, you are not a resident under this definition.

Nonresident individual

For purposes of estimated personal income tax under Tax Law, section 663, you are a New York State nonresident if at the time of the sale or transfer of real property or cooperative unit you were not a resident.

For more information on residency, see Publication 80, *General Income Tax Information for New York State Residents*, and Publication 88, *General Tax Information for New York State Nonresidents and Part-Year Residents*.

Resident estate and trust

For purposes of estimated personal income tax under Tax Law, section 663, if a decedent was domiciled in New York State at the time of his or her death, his or her estate is a resident estate and any trust created by his or her will is a resident trust. If an irrevocable trust consists of property of a person domiciled in New York State when such property was transferred to the irrevocable trust, it is a resident trust. The term *resident trust* also includes (1) any revocable trust consisting of property of a person domiciled in New York State at the time such property was transferred to the trust if it has not later become irrevocable and (2) any revocable trust that has later become irrevocable if the trust consists of property of a person domiciled in New York State when it became irrevocable. The residence of the fiduciary does not affect the status of an estate or trust as a resident or nonresident.

Nonresident estate or trust

For purposes of estimated personal income tax under Tax Law, section 663 a nonresident estate or trust means an estate or trust that is not a resident estate or trust at the time of the sale or transfer of real property or cooperative unit.

Specific instructions for Schedule D

Part I — New York State residents

New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), must sign Part I of Schedule D to certify that the transferor/seller is a resident of New York State (as defined above) at the time of sale or transfer of the real property or cooperative unit. If one or more transferor(s)/seller(s) listed in Schedule A is a New York State resident, **each** resident transferor/seller must sign Part I of Schedule D. If more signature space is needed, please photocopy Schedule D and submit as many schedules as necessary to accommodate all resident transferor(s)/seller(s).

Note: A resident of New York State is not required to pay estimated personal income tax under Tax Law, section 663. However, a resident may still be required to pay estimated personal income tax under Tax Law, section 685(c), but not as a condition of recording a deed for the sale or transfer of real property.

Sample

Part II — Nonresidents of New York State

New York State nonresident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584) must sign Part II of Schedule D to certify that the transferor/seller is a nonresident of New York State at the time of the sale or transfer, **and** to claim exemption from payment of estimated personal income tax as provided for under Tax Law, section 663. Check the box of the exemption which applies to this sale or transfer of real property or cooperative unit. If any one exemption applies to a transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law, section 663. If more signature space is needed, please photocopy Schedule D and submit as many schedules as necessary to accommodate all nonresident transferor/sellers.

Note: If there are one or more transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), each transferor/seller who is claiming exemption from the payment of estimated personal income tax under section 663 of the Tax Law must sign Part II. **Each** nonresident transferor/seller who does not meet one of the exemptions as listed in Part II of Schedule D must complete a separate Form IT-2663 or Form IT-2664. For more information, see *Multiple transferors/sellers* on page 5.

Nonresident exemption for principal residence

If the real property or cooperative unit being sold or transferred qualifies in total as the principal residence of a nonresident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), only the transferor(s)/seller(s) who can claim this real property or cooperative unit as a principal residence (within the meaning of section 121 of the IRC) at the time of the sale or transfer can sign and certify the exemption from the estimated personal income tax provision under Tax Law, section 663(c)(1).

Note: Real property or a cooperative unit that qualifies in total as the principal residence of the transferor/seller qualifies for the exemption even if part of the gain is not excluded under IRC section 121 because the gain exceeds the amount of the exclusion provided for in that section.

Transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584) who cannot claim this real property or cooperative unit as their principal residence at the time of sale or transfer should not sign Part II of Schedule D. The transferors/seller(s) must instead complete a separate Form IT-2663 or Form IT-2664. For more information, see *Payment of estimated personal income tax,* on page 1.

Property used in part as a principal residence

If a portion of the real property or cooperative unit being sold or transferred qualifies as the principal residence of a nonresident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584) and a portion of the real property or cooperative unit does not qualify, **do not** sign Part II of Schedule D. Instead, each nonresident transferor/seller listed in Schedule A of Form TP-584 (or an attachment to Form TP-584) must complete a separate Form IT-2663 or Form IT-2664.

Privacy notification — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Sample

Need help?

Internet access: *www.nystax.gov* (for information, forms, and publications)

Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Mortgage and Transfer Tax Information Center: (518) 457-8637
For in-state callers without free long distance: 1 888 698-2914
To order forms and publications: (518) 457-5431
For in-state callers without free long distance: 1 800 462-8100

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.