

UNDERWRITING BULLETIN

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NY000307

Date: April 3, 2007

To: All New York State Office Counsel, Managers and Agents

From: Harold S. Boxer, Vice President and Senior Agency Counsel

Re: New NYS Transfer Tax forms (TP-584)

The New York State Department of Taxation and Finance has issued an email sent generally to County Recorders advising them that Forms TP-584 and TP-584-REIT have revised with the new Forms being dated March 2007. The new Forms are annexed to this Underwriting Bulletin.

The Department advises recording offices as follows:

"The Tax Department has recently revised Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certificate of Exemption from the Payment of Estimated Personal Income Tax* and Form TP-584-REIT, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate for Real Estate Investment Trust Transfers*. The revised forms have a print date of (3/07). PDF versions of these forms are attached.

"The modifications are minor and **you may continue to accept Form TP-584 with a print date of (11/04) and Form TP-584-REIT with a print date of (4/06) for purposes of recording a deed or other instruments effecting the conveyance of real property.** You should, however, destroy any remaining supplies of these forms you have on hand and begin distributing the revised forms to the public when you receive your new supply....."

The forms may be downloaded at <http://www.tax.state.ny.us/>.

If you have any questions, contact Agency Legal Services at 212.922.0050

References:

Bulletins Replaced:	None
Related Bulletins:	None
Underwriting Manual:	None
Exceptions Manual:	None
Forms:	Two
Attachments:	None

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Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Recording office time stamp

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Please print or type.

Schedule A — Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, Social security number, and Federal employer ident. number.

Location and description of property conveyed

Table with columns: Tax map designation (Section, Block, Lot), Address, City/village, Town, County.

Type of property conveyed (check applicable box)

Form with checkboxes for property types (1-8) and fields for Date of conveyance and Percentage of real property conveyed.

Condition of conveyance (check all that apply)

Form with checkboxes a-r for various conditions of conveyance such as fee interest, acquisition of controlling interest, etc.

Table for recording officer's use with columns: Amount received, Date received, Transaction number.

Schedule B — Real estate transfer tax return (Tax Law, Article 31)

Part I – Computation of tax due

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) <input type="checkbox"/> Exemption claimed	1.	
2	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)	2.	
3	Taxable consideration (subtract line 2 from line 1)	3.	
4	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	4.	
5	Amount of credit claimed (see instructions and attach Form TP-584.1, Schedule G)	5.	
6	Total tax due* (subtract line 5 from line 4)	6.	

Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more

1	Enter amount of consideration for conveyance (from Part I, line 1)	1.	
2	Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	2.	
3	Total additional transfer tax due* (multiply line 2 by 1% (.01))	3.	

Part III – Explanation of exemption claimed on Part I, line 1 (check any boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to 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 agreement or compact with another state or Canada)..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) k
- l. Other (attach explanation) l

*Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in New York City, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

Schedule D - Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, section 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

Part I - New York State residents

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferor(s)/seller(s)

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

Part II - Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

Exemption for nonresident transferor(s)/seller(s)

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ Date to _____ Date (see instructions).
- 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.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date



Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate for Real Estate Investment Trust Transfers

Recording Office Time Stamp

Before completing this form, see General Information on back.

Schedule A — Information relating to conveyance

Form for Schedule A with fields for Grantor and Grantee information, including Name, Mailing address, Social security number, and Federal employer identification number.

Table with 5 columns: Tax map designation (Section, Block, Lot), Address, City/village, Town, and County.

Type of property conveyed (check applicable box)

- 1 Vacant land, 2 Commercial/industrial, 3 Apartment building, 4 Office building, 5 Other. Includes Date of conveyance field with month, day, year sub-fields.

Condition of conveyance (check all that apply)

- a. Conveyance of fee interest, b. Acquisition of a controlling interest, c. Transfer of a controlling interest, d. Conveyance which consists of a mere change of identity or form of ownership or organization, e. Other (describe).

Schedule B — Real estate transfer tax return (Article 31 of the Tax Law)

Part I — Computation of tax due

Table for Part I with 4 rows: 1 Enter amount of consideration, 2 Continuing lien deduction, 3 Taxable consideration, 4 Tax due.

Part II — Explanation of exemption claimed in Part I, line 1 (check either box that applies)

- a. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. b. Other (attach explanation).

Schedule C - Credit line mortgage certificate (Article 11 of the Tax Law)

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)

- 1 The real property being sold or transferred is not subject to an outstanding credit line mortgage. 2 The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason: [] The transfer of real property is to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor. [] The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more and the real property being sold or transferred is not principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling. Please note: for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)R for more information regarding these aggregation requirements. [] Other (attach detailed explanation). 3 The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason: [] A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed. [] A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available. 4 The real property being transferred is subject to an outstanding credit line mortgage recorded in [] (insert liber and page or reel or other identification of the mortgage). The maximum principal amount secured in the mortgage is []. No exemption from tax is claimed and the tax of [] is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City, make check payable to the NYC Department of Finance.)

Table for recording officer's use with columns: Amount received, Date received, Transaction number.

General Information

A conveyance of real property to a real estate investment trust (REIT), as defined in section 856 of the Internal Revenue Code, may be subject to the transfer tax at the reduced rate of \$1 for each \$500 or fractional part of consideration. The conveyance may be to the REIT itself or to an entity, such as a partnership or a corporation, in which a REIT owns a controlling interest immediately following the transfer (REIT transfer).

To qualify for the reduced transfer tax rate, REIT transfers that are *in connection with the initial formation* of the REIT must occur on or after June 9, 1994. In addition, the REIT transfer must also meet certain *ownership retention requirements* and the *use of proceeds requirement* described below. **See TSB-M-94(4)R for the requirements for determining whether a REIT transfer qualifies as being a transfer that occurs in connection with the initial formation of the REIT.**

In addition, REIT transfers *other than those in connection with the initial formation* of the REIT qualify for the reduced transfer tax rate if they occur on or after July 13, 1996, but before September 1, 2008. Furthermore, in order to qualify for the reduced transfer tax rate, a REIT transfer must meet the *ownership retention requirements* described below.

Ownership retention requirements

As part of the consideration for the conveyance of real property or interest therein, the grantor(s) must receive ownership interests in the REIT or in an entity controlled or to be controlled by the REIT which have at least a certain minimum value as described herein. The value of those ownership interests received in the REIT or in an entity controlled or to be controlled by the REIT must be equal to at least 40% (50% if the conveyance is *other than in connection with the initial formation* of a REIT) of the equity value of the real property or interest therein conveyed by the grantor(s) to the grantee. In addition, the ownership interests in the REIT or in an entity controlled or to be controlled by the REIT received by the grantor(s) as part of the consideration for the conveyance must be retained by the grantor(s) (or an owner of the grantor) for a period of at least two years from the date of the REIT transfer, except in the case of the subsequent conveyance of these interests as a result of the death of an individual grantor. **See TSB-M-94(4)R for the method used to calculate the equity value of the property and the value of the ownership interests received.**

Use of proceeds requirement

At least 75% of the net cash proceeds (after deducting underwriting discounts) received by the REIT from its initial offering must be used for the following purposes:

- (a) to make payments on loans secured by any interest in the real property owned directly or indirectly by the REIT;
- (b) to pay for capital improvements to the real property owned directly or indirectly by the REIT;
- (c) to pay costs, fees and expenses (including brokerage fees, commissions and professional fees) incurred in connection with the creation of a leasehold or sublease pertaining to the real property owned directly or indirectly by the REIT;
- (d) to make payments to or on behalf of a tenant as an inducement to enter into a lease or sublease, including but not limited to the following:
 - (i) a cash bonus paid to a tenant for signing a lease;
 - (ii) a payment for the unexpired term of a tenant’s previous lease;
 - (iii) payment of a tenant’s moving costs;
 - (iv) payment for a tenant’s improvements that do not constitute capital improvements (such as temporary partitions or non-permanent electrical wiring for computer equipment); and
 - (v) payment of a tenant’s attorneys’ fees;

- (e) to acquire any interest in real property (including an ownership interest in any entity owning real property) **except** an acquisition that would qualify for the reduced rate of tax provided for a REIT transfer (without regard to this requirement); or
- (f) for reserves established for any of the purposes described in items (a), (b), (c) or (d) above.

For purposes of this requirement, the term *real property* includes real property owned directly or indirectly by the REIT, whether located inside or outside New York State. Also, the calculation of the net cash proceeds from the initial offering of the REIT is made without regard to any proceeds resulting from the exercise of any underwriter’s over-allotment option in connection with the initial offering of the REIT shares.

Payment of estimated personal income tax by individuals, estates, and trusts

Nonresidents – Nonresident individuals, estates, and trusts taxed under Article 22 of the Tax Law must comply with the provisions of Tax Law section 663, estimating the personal income tax on the gain, if any, from the sale or transfer of certain real property located in New York State. Such nonresident individuals, estates, and trusts are required to either complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form TP-584, Schedule D, *Certification of exemption from the payment of estimated personal income tax*, and file it with Form TP-584-REIT.

Residents – The requirement for payment of estimated personal income tax under Tax Law section 663 does not apply to individuals, estates, and trusts who are **residents** of New York State at the time of the sale or transfer. Resident individuals, estates, and trusts must complete Form TP-584, Schedule D, *Certification of exemption from the payment of estimated personal income tax*, and file it with Form TP-584-REIT.

See *Payment of estimated personal income tax*, on page 1 of Form TP-584-I, *Instructions for Form TP-584*, for more information.

Specific instructions

Schedule A

Condition of conveyance

Indicate the condition of conveyance by checking all the condition(s) that apply. If you check item d, attach Form TP-584.1, *Real Estate Transfer Tax Return Supplemental Schedules*, to Form TP-584-REIT, with Schedule F completed.

Schedule B

Line 1 – Enter the consideration for the conveyance as set forth in section 1402(b)(3) of the Tax Law. **See TSB-M-94(4)R for more information on the calculation of consideration and net cash flow from operations.**

Line 2 – **See Form TP-584-I, Line Instructions for Completing Form TP-584**, page 2, for more information on the continuing lien deduction.

Line 3 – Enter the taxable consideration by subtracting line 2 from line 1.

Line 4 – Compute and enter the amount of tax due based on the consideration entered on line 3. The rate is \$1 for each \$500, or fractional part thereof, of taxable consideration on line 3.

Schedule C

Check the appropriate box on Schedule C, if this schedule is required.

Signature and affirmation (both the grantor(s) and grantee(s) must sign).

The undersigned certify that the above return, including any certification, schedule or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Grantor signature	Title	Grantee signature	Title
Grantor signature	Title	Grantee signature	Title