

Memorandum

To: Cooperative Directors and Managing Agents

From: Balber Pickard Battistoni Maldonado & Van Der Tuin, PC

Subject: Revisions to NYS Tax Law on Gain Realized Upon Sale of Co-ops by Nonresidents

Date: November 1, 2004

New York State has made recent changes to personal income taxation of transfers of cooperative apartments of which you should be aware.

The legislature amended the state tax law (§§ 631, 633) to include as taxable income the gain realized from the transfer of co-op apartment shares by an individual, trust, or estate that is not a resident of New York State. Such gain will also be treated as taxable income of the nonresident if the shares are held in a partnership. These changes are retroactive to January 1, 2004.

In addition, to assist in the collection of tax on this gain, transferors in all co-op apartment transfers closing on or after November 18, 2004, must complete and sign Schedule D on the New York State Transfer Tax Return (form TP-584), certifying that they are residents of New York State. If, however, the transferor is not a New York State resident, additional reporting and payment requirements are imposed as of November 18, 2004. In addition to the TP-584, non-resident transferors must complete a new state tax form (IT-2664) and pay an estimated tax on the gain, to be filed with the TP-584 within 15 days of closing.¹ Copies of the IT-2664 and TP-584 forms are enclosed.

Only the transferor is responsible for the filing and payment of the estimated tax. Neither the purchaser, cooperative, or transfer agent is liable, nor will any lien attach to the co-op shares, if the transferor fails to file the IT-2664 and pay the estimated tax. Nevertheless, we strongly suggest that all transfer agents make certain that IT-2664 is completed and attached to the TP-584, along with checks for the payment of the income tax if required. You might also want to inform your nonresident shareholders of this new law and urge them to consult their accountants or attorneys prior to selling their apartments.

Please call us if you have any questions concerning this matter.

¹ New York residents may incur Federal and New York State income tax on gain from their co-op sale as well, but they are not required to pay an estimated tax at closing.