

## **Valtech News and Reviews**

Part H of Chapter 60 of the Laws of 2004 amended Tax Law Section 631 (“New York source income of a nonresident individual”) and 633 (“Estimated tax on sale or transfer of real property by nonresident”) to require the payment of estimated income tax on the gain, if any, realized by the non-resident transferor of a cooperative unit on the transfer of the unit on and after November 18, 2004.

The New York State Department of Taxation and Finance has just posted to its WEB Site new Form IT-2664 ([http://nystax.gov/pdf/2004/fillin/inc/it2664\\_2004\\_fill\\_in.pdf](http://nystax.gov/pdf/2004/fillin/inc/it2664_2004_fill_in.pdf)), the “Nonresident Cooperative Unit Estimated Income Tax Payment Form” which forms recites that it is “valid for sales or transfers (date of conveyance) after November 17, 2004 but before January 1, 2005”. Also posted to the Site are “Instructions for Form IT-2664” (IT-2664-I) and a Memo (TSB-M-04(5)I) of the Technical Services Division of the Department’s Office of Tax Policy Analysis title “New York Personal Income Tax Treatment and Estimated Tax Requirement for Sales, Conveyance or Other Dispositions of Shares of Stock in a Cooperative Housing Corporation by Nonresidents”.

### **New York State Department of Taxation and Finance Office of Tax Policy Analysis Technical Services Division**

TSB-M-04(5)I  
TSB-M-04(7)R  
October 19, 2004

### **New York Personal Income Tax Treatment and Estimated Tax Requirement for Sales, Conveyances, or Other Dispositions of Shares of Stock in a Cooperative Housing Corporation by Nonresidents**

Chapter 60 of the Laws of 2004 amended sections 631 and 663 of the Tax Law. As a result of these amendments, effective for taxable years beginning on or after January 1, 2004, nonresident individuals, estates, and trusts are required to include in their New York source income any gain from sales, conveyances, or other dispositions (sales or transfers) 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. In addition, the new law requires nonresidents to pay estimated personal income tax on the gain, if any, from such sales or transfers occurring on or after November 18, 2004, to the Tax Department within 15 days of the delivery of the instrument effecting the sale or transfer unless an exemption applies. The estimated tax must be paid using Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form* (see *Estimated personal income tax requirements* on page three of this memorandum). These new law provisions are explained in more detail below.

#### **Including the gain in New York source income**

#### **New York State nonresident individuals**

Section 601(e) of the New York State Tax Law imposes a personal income tax on a nonresident individual’s taxable income that is derived from New York sources. The tax is equal to the tax computed as if the individual were a New York State resident for the entire year,

reduced by certain credits, multiplied by the income percentage.

The numerator of the fraction used to compute the income percentage is the individual's New York source income. The New York source income of a nonresident is the sum of the items of income, gain, loss and deduction entering into federal adjusted gross income derived from or connected with New York sources and any New York addition and subtraction modifications under sections 612(b) and 612(c) of the Tax Law that relate to income derived from New York sources (New York adjusted gross income from New York sources). The denominator of the fraction used to compute the income percentage is the nonresident's New York adjusted gross income from all sources for the entire year.

Because the starting point for computing New York adjusted gross income is federal adjusted gross income, the gain, if any, derived from the sale or transfer of shares of stock in a cooperative housing corporation, as described above, is included in computing the individual's New York State tax as if a resident and the individual's New York adjusted gross income (the denominator of the income percentage). Effective for taxable years beginning on or after January 1, 2004, any gain from such sale or transfer constitutes income derived from New York sources and is included in New York source income (the numerator of the income percentage) to the extent the gain is includable in federal adjusted gross income for the year. A partner or beneficiary of an estate or trust must also include in New York source income his or her share of any such gain from a partnership, estate, or trust.

A loss from the sale or transfer of a cooperative unit is included in New York source income only if the cooperative unit was connected with a trade or business carried on in New York State.

### **New York State nonresident estates and trusts**

A nonresident estate or trust computes its New York State personal income tax in the same manner as a nonresident individual. Accordingly, the rules applicable to nonresident individuals also apply to a nonresident estate or trust in computing the New York source income, New York adjusted gross income, and New York State tax as if a resident for the entire year.

### **New York State part-year resident individuals**

A New York State part-year resident individual computes his or her New York State tax in the same manner as a nonresident individual. However, the New York source income of a part-year resident (the numerator of the income percentage) is the sum of the following:

1. the individual's New York adjusted gross income from all sources for the resident period, determined as if the individual's tax year for federal income tax purposes were limited to the resident period;
2. the individual's New York adjusted gross income derived from New York sources for the nonresident period, determined as if the individual's tax year for federal income tax purposes were limited to the nonresident period; and
3. the special accruals required under section 639 of the Tax Law that relate to adjusted gross income.

Accordingly, any gain from sales or transfers of shares of stock in a cooperative housing corporation (as described on page one of this memorandum) that are reflected in the part-year

resident individual's federal adjusted gross income will be reflected in the computation of the individual's New York adjusted gross income from all sources for the entire year (the denominator of the income percentage) and the New York State tax as if a resident for the entire year. The gain from such sales or transfers must be included in the part-year resident individual's New York source income (the numerator of the income percentage) regardless of whether the gain occurred in the resident or nonresident period.

### **New York State part-year resident trusts**

A part-year resident trust computes its New York State personal income tax in the same manner as a part-year resident individual. Accordingly, the same rules that apply to gains from sales or transfers of shares of stock in a cooperative housing corporation (as described on page one of this memorandum) received by part-year resident individuals, apply to part-year resident trusts.

### **Estimated personal income tax requirements**

#### **Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form***

Effective for sales or transfers of shares of stock in a cooperative housing corporation (as described on page one of this memorandum) that occur on or after November 18, 2004, nonresident individuals, estates, and trusts who are transferors or sellers must file Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*, together with 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*, and pay the estimated income tax due on the gain, if any, to the Tax Department within 15 days of the delivery of the instrument effecting the sale or transfer, unless the transferor is exempt as explained below. (Tax Law section 663.)

The amount of estimated income tax due with Form IT-2664 is equal to the amount of gain multiplied by the highest effective New York State tax rate for the year. Nonresident individuals, estates, and trusts will take into account the amount of estimated income tax paid when they file their New York State income tax return. If the estimated income tax paid exceeds the nonresident's tax liability for the year, a refund will be issued. Estimated income tax payments cannot be refunded prior to the filing of a personal income tax return.

A nonresident transferor or seller who meets one of the exemptions (as explained below) is not required to file Form IT-2664. However, the transferor or seller must sign Form TP-584, Schedule D to certify that the taxpayer qualifies for one of the exemptions.

A nonresident transferor or seller is exempt from the payment of estimated personal income tax on the sale or transfer of a cooperative unit under Tax Law section 663 if:

- the proprietary leasehold being transferred in connection with the sale, conveyance, or other disposition of the shares of stock in a cooperative housing corporation is a principal residence of the seller or transferor within the meaning of Internal Revenue Code section 121<sup>1</sup>; or

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<sup>1</sup> A principal residence means a person's main home within the meaning of section 121 of the IRC. This is the home for which a person is allowed to exclude all or a portion of the gain for federal income tax purposes. Usually the home a person lives in most of the time is his or her main home and

can be, but is not limited to, a house, houseboat, mobile home, cooperative apartment, or condominium.

- 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.

The requirement for payment of estimated 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 of a cooperative unit. However, New York State resident individuals, estates and trusts must complete Schedule D on Form TP-584 to certify that they are not subject to the provisions of section 663 of the Tax Law.

Neither Form IT-2664 nor Schedule D of Form TP-584 need to be completed if the proprietary leasehold being transferred in connection with the sale, conveyance, or other disposition of the shares of stock in a cooperative housing corporation is being transferred by anyone or any entity other than an individual, estate, or trust. However, a transferor must complete Schedules A and B of Form TP-584 to satisfy the transfer tax requirements.

A copy of Form IT-2664 may be downloaded from the Tax Department Web site ([www.nystax.gov](http://www.nystax.gov)) or may be ordered by phone by calling 1 800 462-8100.

### **Form IT-2105, *Estimated Income Tax Payment Voucher***

Since Form IT-2664 is not required for all sales or transfers of a cooperative unit as described on page one of this memorandum, the transferor or seller may be required to make an estimated income tax payment(s) with Form IT-2105, *Estimated Income Tax Payment Voucher*, to take into account the additional tax due on the sale or transfer. For more information on estimated income tax, see Form IT-2105 and the instructions for Form IT-2105. For more information on filing requirements for nonresidents, see Publication 88, *General Tax Information for New York State Nonresidents and Part-Year Residents*, Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*, and the instructions for Form IT-203.

Instructions to view and print out the form are as follow:

To view the form, please visit [http://nystax.gov/pdf/2004/killin/inc/it2664\\_2004\\_fill\\_in.pdf](http://nystax.gov/pdf/2004/killin/inc/it2664_2004_fill_in.pdf) . The form will open up using Adobe Acrobat Reader. You will need to print the document which is approximately 3 pages by pressing the 3<sup>rd</sup> icon on the Adobe toolbar which looks like a printer. If you **do not** have the Adobe Acrobat Reader program please visit <http://www.adobe.com/support/downloads/main.html> and under the heading "Readers", click on the operating system that you are using, then select "Acrobat Reader for Windows - All Languages".