



Instructions for Form TP-581 Questionnaire - Transferee

A. This questionnaire must be attached to and filed with Form TP-580, *Questionnaire - Transferor*, at least 20 days before the anticipated date of transfer.

B. If any of the conditions in items 1 through 7 below are met, the questionnaires need not be filed. However, an affidavit (Schedule B of Form TP-584), affirming that the transfer of real property meets one of the conditions, must be filed by the transferor and the transferee.

1. The transfer of real property 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.
2. The transfer is a transfer of real property where the consideration is less than \$500,000 and is neither (A) pursuant to a cooperative or condominium plan, nor (b) a partial or successive transfer (i.e., a transfer that is one of a series of transfers of contiguous or adjacent interests in real property or a transfer of subdivided parcels).
3. The transfer is a transfer of real property by tenants in common, joint tenants or tenants by the entirety where the aggregate consideration is less than \$500,000.
4. The conveyance is not a transfer of real property within the meaning of section 1440.7 of Article 31-B of the Tax Law.
5. The transfer of real property consists of premises wholly occupied and used **exclusively** as a residence by the transferor, including a cooperative apartment or condominium unit occupied by the transferor exclusively as a residence.
Note: If only **part** of the premises is actually occupied and used a residence by the transferor (e.g., 2-family house) and if the consideration for the entire property is \$500,000 or more, the questionnaires must be filed.
6. The transferor is New York State or any of its agencies, instrumentalities, political subdivisions, or public corporations, including a public corporation created pursuant to an agreement or compact with another state or Canada.
7. The transferor is the United Nations or any other international organization of which the United States is a member, the United States of America or any of its agencies or instrumentalities.

The affidavit that must be used to affirm that the transfer of real property meets any of the conditions in items 1 through 7 above is Schedule B of Form TP-584, *Combined Real Property Transfer Gains Tax Affidavit, Real Estate Transfer Tax Return, Credit Line Mortgage Certificate*. This form must be filed no later than the 15th day after the delivery of the instrument effecting the conveyance or transfer with the recording officer of the county where the real property transferred is located or, if the transfer is not recorded, directly with: NYS Tax Department, TTTB - Transfer Tax, PO Box 5045, Albany NY 12205-5045.

Note: 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-582, *Tentative Assessment and Return*, Form TP-584 or Form TP-584.2, *Combined Real Property Transfer Gains Tax Affidavit, Real Estate Transfer Tax Return for Public Utilities and Governmental Agencies*.

C. Following receipt of the completed transferor's and transferee's questionnaires and any other required information or documentation, Form TP-582, *Tentative Assessment and Return*, will be issued to the transferor and Form TP-582.2, *Tentative Assessment and Return* -

Transferee Copy, will be issued to the transferee by the Tax Department. However, in the case of a transfer of real property in lieu of foreclosure or a transfer resulting from the enforcement of or in lieu of the enforcement of a lien, security interest or other rights on or in shares or other ownership interests evidenced by stock certificates or other instruments, and a leasehold evidenced by a proprietary lease, or either of the foregoing and such transfers by a debtor in bankruptcy to a secured lender, Form TP-585, *Tentative assessment and Return - Transferee/Secured Party Copy*, may be issued to the transferee by the Department in lieu of Form TP-582.2. Form TP-585 will be issued to the transferee in order to have the instrument effecting the conveyance or transfer recorded without payment of any real property transfer gains tax that may be due from the transferor, if the transferee does not or is not required to pay any sum of money to the transferor.

- D. 1. Whenever the transferor or transferee fails to submit the questionnaires and other required information and documentation to the Tax Department, or whenever the Tax Department informs the transferee that a tentative assessment of tax exists, any sums of money, property or other consideration that the transferee is required to transfer over to the transferor will be subject to a first priority right for any tax stated to be due from the transferor to New York State in the tentative assessment, and (except as provided in section 5) the transferee is forbidden to transfer to the transferor any such sums of money, property or consideration to the extent of the amount of New York State's claim stated in the tentative assessment, whether or not the transferor has represented to, or informed the transferee that, the transferor owes any tax, and whether or not the transferee has knowledge that tax is owed and whether any tax is in fact owed.
2. If the Tax Department fails to give the statement of tentative assessment of the tax to the transferor and the transferee within 20 days from receipt of the questionnaires and the other required information and documentation, the transferee will be released from any further obligation to withhold any sums of money, property or other consideration that the transferee is required to transfer over to the transferor.
3. For the transferee's failure to comply with these provisions, the transferee (except as provided in section 5) will be personally liable for the payment to New York State of any tax stated in the tentative assessment to be due New York State from the transferor. However, if no tentative assessment has been issued because the transferee did not file the required questionnaire, or the transferee supplies willfully false or fraudulent information, the transferee shall be personally liable for the taxes stated to be due in a notice of determination, except that the liability of the transferee will be further limited to the sums of money, property or other consideration that the transferee is required to transfer over to the transferor. The transferee's liability may be assessed and enforced in the same manner as the transferor's liability for tax.
4. Upon receipt of the tentative assessment from the Tax Department stating the amount of New York State's claim, the transferee may pay such claim to New York State from any sums of money, property or consideration withheld in accordance with the above provisions, except that the payment is limited to the sum of money, property or other consideration that the transferee is required to transfer over to the transferor, and upon making the payment, the transferee will be relieved of all liability for such amounts to the transferor, and such amounts paid to New York State will be deemed satisfaction of the tax liability of the transferor, to the extent of the amount of the payment.
5. **Exceptions:**
 - (a) The transferee is not forbidden to transfer the consideration to the transferor, and the transferee will be released from personal

liability if a bond issued by a surety company approved by the Superintendent of Insurance as to solvency and responsibility, authorized to transact business in New York State and acceptable to the Commissioner of Taxation and finance, is filed with the Tax Department, conditioned upon payment of the balance of tax due for which the transferee is liable.

- (b) The transferee, in an action to foreclose a mortgage, is not forbidden to transfer the consideration to the officer conducting the sale, and the transferee shall be released from personal liability for the gains tax determined to be due from the mortgagor.
- (c) There is no transferee liability in the case of the following transfers:
 - (1) the transfer of shares of stock in a cooperative housing corporation and/or the associated proprietary lease to a cooperative housing corporation or other secured party; or
 - (2) the transfer of other ownership interests in entities to a secured party that results in a transfer of real property (i.e., the transfer or acquisition of a controlling interest in an entity with an interest in real property),

but only if the transfers are pursuant to an action or proceeding to enforce a lien, security interest or other rights on or in shares or other ownership interests evidenced by stock certificates or other instruments, and a leasehold evidenced by a proprietary lease, or either of the foregoing.

- (d) There is no transferee liability in the case of a transfer of real property in lieu of foreclosure or in lieu of enforcement of a lien, security interest or other rights on or in shares or other ownership interests evidenced by stock certificates or other instruments, and a leasehold evidenced by a proprietary lease, or either of the foregoing, but only to the extent that no money is required to be paid to the transferor by the transferee. The relief from transferee liability described herein, also applies to such transfers made by a debtor in bankruptcy. Please note that transferee liability will be imposed if the Commissioner of Taxation and Finance determines that such lien, security interest or other rights were created for the primary purpose of acquiring the real property or interest therein in a transaction which would otherwise limit or eliminate transferee liability.

6. If the liability of a transferee for payment to New York State of the tax determined to be due from the transferor has been wholly paid or satisfied or no longer exists, the Tax Department will mail to the transferee a notice (Form TP-586, *Transferee's Release*) stating that the liability has been wholly paid or satisfied or no longer exists.

E. On page 1, line 1, enter the consideration to be paid by the transferee to the transferor for the transfer. Do not include brokerage fees paid by the transferee to the transferor or to the transferor's broker. These amounts must be entered on line 2 or 3.

Consideration

- (a) means the price paid or required to be paid for real property or any interest therein, including payment for an option or contract to purchase or use real property, whether expressed in a deed and whether paid or required to be paid by money, property, or any other thing of value and including the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether the underlying indebtedness is assumed or taken subject to. Consideration includes the cancellation or discharge of an indebtedness or obligation.
- (b) in the case of (i) the granting of an option with use and occupancy of real property or (ii) the creation of a leasehold or sublease that is a transfer of real property as defined in section 1440.7 of the Tax Law, consideration shall also include the present value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any option to purchase or renew included in such transfer and the present value of rental or other payments attributable to the exercise of any option to renew.
- (c) in the case of a transfer that includes other assets that are in addition to real property or an interest therein and for which there is no reasonable apportionment of the consideration for such real property or interest, consideration means that portion of the total consideration that represents the fair market value of

such real property or interest. In the case of a transfer of a controlling interest in an entity with an interest in real property, there shall be an apportionment of the fair market value of the interest in real property to the controlling interest for the purpose of ascertaining the consideration for the transfer of such controlling interest.

- (d) (i) In the case of a transfer of real property resulting from an action to foreclose a mortgage or lien pursuant to the provisions of the Real Property Actions and Proceedings Law, including such a transfer by a debtor in bankruptcy, where the mortgagee or lienor (or any agent or nominee thereof) is the successful bidder, consideration means the sum of (A) the higher of the price paid by the mortgagee or lienor (the bid price) or the amount of the judgment of foreclosure and sale and (B) the amount of all other liens or encumbrances remaining on the real property or interest therein after the transfer, whether the underlying indebtedness is assumed or taken subject to. However, consideration shall not exceed the fair market value of the real property or interest therein.
- (ii) In the case of a transfer of real property to a mortgagee or lienor (or to any agent or nominee thereof) in lieu of foreclosure or any other action to enforce a security interest including such a transfer by a debtor in bankruptcy, consideration means the sum of (A) the unpaid balance of the debt secured by the mortgage or lien and (B) the amount of all other liens or encumbrances remaining on the real property or interest therein after the transfer, whether the underlying indebtedness is assumed or taken subject to. However, consideration shall not exceed the fair market value of the real property or interest therein.
- (iii) In the case of a transfer of real property or an interest therein pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock of a cooperative housing corporation and associated proprietary lease, including such a transfer by a debtor in bankruptcy, consideration means the sum of (A) the unpaid balance of the debt secured by such lien, security interest, or other rights, (B) the total amount of all other liens, security interest or other interests remaining on the shares of stock of the cooperative housing corporation and associated proprietary lease after the transfer, whether the underlying indebtedness is assumed or taken subject to and (C) a pro rata portion of the total amount of all other liens or encumbrances on the real property of the cooperative housing corporation that remain after the transfer. However, consideration shall not exceed the fair market value of such shares of stock of the cooperative housing corporation and associated proprietary lease.

F. Privacy Notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions and forms, is found in Articles 8, 11, 31 and 31-B of the Tax Law and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer the mortgage recording and real estate transfer taxes, and the tax on gains derived from certain real property transfers, and for any other purpose authorized by law.

Failure to provide the required information may result in civil or criminal penalties, or both, under the Tax Law; and, in the case of the mortgage recording tax, failure to secure a refund of all or a portion of that tax.

This information will be maintained by the Director of the Data Management Services Bureau, NYS Tax Department, Building 8 Room 905, W A Harriman Campus, Albany, NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from areas outside New York State call (518) 438-8581.

G. Affidavit of Transferee

The questionnaire must be acknowledged before a notary public.