

**New York State Department of Environmental Conservation**

**Office of General Counsel, 14<sup>th</sup> Floor**

625 Broadway, Albany, New York 12233-1500

**Phone:** (518) 402-9507

**Fax:** (518) 402-9018 or (518) 402-9019

**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Marten  
Commissioner

October 2, 2012

Anthony B. Tohill, Esq.  
Attorneys at Law  
12 First Street, P.O. Box 1330  
Riverhead, NY 14094

Re: Site No. 915044  
B.B.S. Treated Lumbar Corporation Site

Dear Mr Tohill,

The above referenced Site requires an Environmental Easement as part of the remediation process. In order to facilitate this process, please find attached duplicate final Environmental Easement forms (x 2) and a digital copy of the related Site Management Plan. Please have your client sign/notarize both easement forms with the attached TP 584 and return them to my attention by October 12, 2012.

Additionally, please forward a copy of the corporation documents with evidence of any successors-in-interest, enclosed is a return envelope for this purpose. The fully executed documents will be filed in the Suffolk County Clerk's Office upon receipt.

If you have any questions, or if you need further assistance with this matter, do not hesitate to contact me at (518) 402-9507 or e-mail [ymward@gw.dec.state.ny.us](mailto:ymward@gw.dec.state.ny.us).

Sincerely,

Yvonne Ward  
Senior Attorney

Enclosure: Environmental Easement  
TP 584

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**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

**THIS INDENTURE** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between Owner(s) B.B. & S. Treated Lumbar Corporation a/k/a B.B.&S Treated Lumbar Corp., and B.B.& S. Creosote Lumbar Company, Inc. a/k/a B.B&S. Creosote Lumbar Co., Inc., having an office at Speonk-Riverhead Road, Speonk, New York 11972, (collectively the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233.

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of 1348 Speonk-Riverhead Road in the Town of Southampton, County of Suffolk and State of New York, known and designated on the tax map of the County Clerk of Suffolk as tax map parcel numbers: Section 303.00 Block 01.00 Lot 002.008, being the same as that property conveyed to Grantor by deed(s) dated January 30, 1984 recorded in Liber 9516 at page 241; deed dated June 14, 1983 recorded in Liber 9376 at page 156; deed dated December 15, 1976 recorded in Liber 8166 at page 590 and deed dated March 17, 1976 recorded in Liber 8018 at page 101 in Suffolk County Clerk's Office, comprising approximately 9.992 ± acres, and hereinafter more fully described in the Land Title Survey dated May 9, 2012 prepared by L. K. McLean Associates, P.C., which will be attached to the Site Management Plan. The property description (the "Controlled Property") is set forth in and attached hereto as Schedule A; and

**WHEREAS**, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein (“Environmental Easement”)

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan (“SMP”) including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor’s successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

**Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial as described in 6 NYCRR Part 375-1.8(g)(2)(iv)**

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP.

(4) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.

(8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.

(9) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.**

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the institutional controls and/or engineering controls employed at such site:

- (i) are in-place;
  - (ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and
  - (iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;
- (2) the owner will continue to allow access to such real property;
  - (3) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls; and
  - (4) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:      Site Number: 152123  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

With a copy to:                                      Site Control Section  
Division of Environmental Remediation  
NYSDEC  
625 Broadway  
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.







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**SCHEDULE "A" PROPERTY DESCRIPTION****DESCRIPTION OF PROPERTY**

December 30, 2011

**All** that certain plot, piece, or parcel of land known as lot 10 and lot 11 on map entitled "2<sup>nd</sup> Map of Agricultural City Co.", filed July 13, 1896 in the Suffolk County Clerk's Office as file map no. 606; said parcel situate, lying and being at Speonk, Town of Southampton, County of Suffolk, State of New York as shown on a map prepared by L.K. McLean Associates, P.C. dated December 30, 2011. Said parcel being more particularly bounded and described as follows:

**Beginning** at a point on the easterly boundary line of Speonk-Riverhead Road, also known as Evergreen Avenue, at the southwest corner of the aforementioned lot 10; said point of beginning being 3915.84 feet northerly along said easterly boundary line of Speonk-Riverhead Road from a concrete monument found at the intersection of said boundary line with the northerly boundary line of Old Country Road;

**Thence**, from said point of beginning, North 08°37'30" East, along said easterly boundary line of Speonk-Riverhead Road, a distance of 921.00 feet to a point on the northerly boundary line of the aforementioned lot 11, also being on the division line between the subject parcel on the south and land now or formerly of Thomas and Anita Samuels Family Partnership, L.P. and Charles and Deborah Guilloz Family Partnership, L.P. on the north;

**Thence**, South 81°22'49" East, along said northerly boundary line and said division line, a distance of 472.56 feet to a point on the easterly line of said lot 11, also being on the division line between the subject parcel on the west and land now or formerly of Frank Grasso, Jr. on the east;

**Thence**, South 08°37'11" West, along said easterly line of lot 11 and said division line, and continuing along the easterly line of lot 10 and said division line, a distance of 921.00 feet to a point on the first mentioned southerly boundary line of lot 10, also being on the division line between the subject parcel on the north and land now or formerly of Edward Broidy on the south;

**Thence**, North 81°22'49" West, along said southerly boundary line of lot 10 and said division line, a distance of 472.65 feet (472.64 feet deed) to the point or place of beginning.

Being 435,271 square feet or 9.992 acres more or less.

# SURVEY

Survey No. 10050.000

**DESCRIPTION OF THE ENVIRONMENTAL EASEMENT**  
 All that certain plot, piece, or parcel of land known as 15 and 17 on a map entitled "2nd Map of Agricultural City Co." dated July 13, 1896 in the Suffolk County Clerk's Office on file map no. 838, said parcel situated, lying and being at Speonk, Town of Southampton, County of Suffolk, State of New York as shown on a map prepared by L.K. McLean Associates, P.C. dated July 23, 2012. Said parcel being more particularly bounded and described as follows:

**Beginning** at a point on the westerly boundary line of Speonk-Riverhead Road, also known as Evergreen Avenue, at the southwest corner of the aforementioned lot 10, said point of beginning being 3975.84 feet northerly along said westerly boundary line of Speonk-Riverhead Road from a concrete monument fixed at the intersection of said boundary line with the westerly boundary line of Old Country Road;

**Thence**, from said point of beginning, North 02°37'30" East, along said westerly boundary line of Speonk-Riverhead Road, a distance of 521.00 feet to a point on the northerly boundary line of the aforementioned lot 11, also being on the division line between the subject parcel on the north and east now or formerly of Thomas and Anita Samuels Family Partnership, L.P. and Charles and Debra Guller Family Partnership, L.P. on the north;

**Thence**, South 87°22'42" East, along said northerly boundary line and said division line, a distance of 472.26 feet to a point on the westerly line of said lot 11, also being on the division line between the subject parcel on the west and east now or formerly of Frank Gosses, Jr. on the east;

**Thence**, South 02°37'30" West, along said westerly line of lot 11 and said division line, and continuing along the westerly line of lot 10 and said division line, a distance of 521.00 feet to a point on the first mentioned westerly boundary line of lot 10, also being on the division line between the subject parcel on the north and east now or formerly of Edward Brady on the north;

**Thence**, North 87°22'42" West, along said westerly boundary line of lot 10 and said division line, a distance of 472.26 feet (472.24 feet due) to the point of place of beginning.

Being 435.27 square feet or 1.00 acre more or less.

**DESCRIPTION OF HAZARDOUS WASTE REMAINING BOUNDARY - B.B.&S. TREATED LUMBER SITE**  
 All that certain plot, piece, or parcel of land considered to be the boundary of hazardous waste remaining on property known as part of lot 10 and lot 11 on a map entitled "2nd Map of Agricultural City Co." dated July 13, 1896 in the Suffolk County Clerk's Office on file map no. 838, said parcel situated, lying and being at Speonk, Town of Southampton, County of Suffolk, State of New York as shown on a map prepared by L.K. McLean Associates, P.C. dated July 23, 2012. Said parcel being more particularly bounded and described as follows:

**Beginning** at a point on the westerly boundary line of Speonk-Riverhead Road, also known as Evergreen Avenue, said point of beginning being 4282.02 feet northerly along said westerly boundary line of Speonk-Riverhead Road from a concrete monument fixed at the intersection of said boundary line with the northerly boundary line of Old Country Road;

**Thence**, through said property, the following courses and distances:

- 1) South 02°32'42" East, a distance of 77.08 feet to a point, thence
- 2) South 07°29'57" West, a distance of 38.00 feet to a point, thence
- 3) South 02°32'32" East, a distance of 48.54 feet to a point, thence
- 4) South 08°19'30" West, a distance of 191.50 feet to a point, thence
- 5) South 70°48'14" East, a distance of 7.98 feet to a point, thence
- 6) South 03°57'32" West, a distance of 81.11 feet to a point, thence
- 7) South 02°19'48" East, a distance of 23.65 feet to a point, thence
- 8) South 08°30'02" West, a distance of 168.70 feet to a point, thence
- 9) South 77°24'42" West, a distance of 47.91 feet to a point, thence
- 10) South 02°39'44" West, a distance of 69.71 feet to a point, thence
- 11) North 81°21'02" West, a distance of 43.28 feet to a point, thence
- 12) South 28°41'44" West, a distance of 23.16 feet to a point, thence
- 13) North 02°25'57" East, a distance of 28.02 feet to a point, thence
- 14) North 17°42'30" East, a distance of 14.12 feet to the point of place of beginning.

Being 54,472 square feet or 1,260 acres more or less.

- NOTES**
1. MEASUREMENTS ARE IN ACCORDANCE WITH U.S. CUSTOMARY UNITS.
  2. UNMAPPED OR UNRECORDED EASEMENTS OR RIGHTS ARE NOT SHOWN ON THIS SURVEY MAP BEARING A LEGENDED LINE SUBJECT TO A VIOLATION OF SECTION 208, SUBSECTION 2, OF THE NEW YORK STATE EASEMENT LAW.
  3. ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MAP BEARING AN ORIGINAL OF THE LAND SURVEYOR'S SIGNATURE AND SEAL SHALL BE CONSIDERED TO BE TRUE COPIES.
  4. CERTIFICATIONS MADE BY THE SURVEYOR THAT THE SURVEY WAS PERFORMED IN ACCORDANCE WITH THE EASEMENT COPIES OF PRACTICES AND STANDARDS ADOPTED BY THE NEW YORK STATE BOARD OF PROFESSIONAL LAND SURVEYORS. THIS CERTIFICATION SHALL NOT BE HELD TO BE A GUARANTEE OF THE ACCURACY OF THE SURVEY. THE SURVEYOR SHALL NOT BE HELD RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE SURVEY. THE SURVEYOR'S CERTIFICATIONS ARE NOT TRANSPARENT TO ANY OTHER NOTATIONS OR SUBSEQUENT CHANGES.
  5. RIGHTS OF WAY NOT SHOWN ARE NOT DEFINED.
  6. LOCATIONS OF UNDERGROUND UTILITIES OR IMPROVEMENTS, IF THEY EXIST, ARE NOT PART OF THIS SURVEY.
  7. TITLE REPORT COMMITMENT NO. 820213 WAS PROVIDED BY HENKERS INVESTMENT AND RESEARCH SERVICES, INC. LAST REVISED JUNE 1, 2012.
  8. PROPERTY IS SUBJECT TO CONDEMNATION AND RESTRICTIONS UNDER THE EASEMENT COPIES OF PRACTICES AND STANDARDS ADOPTED BY THE NEW YORK STATE BOARD OF PROFESSIONAL LAND SURVEYORS. THIS CERTIFICATION SHALL NOT BE HELD TO BE A GUARANTEE OF THE ACCURACY OF THE SURVEY. THE SURVEYOR SHALL NOT BE HELD RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THE SURVEY. THE SURVEYOR'S CERTIFICATIONS ARE NOT TRANSPARENT TO ANY OTHER NOTATIONS OR SUBSEQUENT CHANGES.
  9. THE SURVEY IS CONSIDERED TO BE A FINAL SURVEY.
  10. A FINANCIAL STATEMENT, EASEMENT WILL BE REQUIRED FOR THE EASEMENT. THE EASEMENT AGREEMENT WILL BE WITH THE TOWN OF SOUTHAMPTON.

- DEEDS REFERENCES**
- Deeds shown are from deed compilations and are the same properties (or a portion of that property) described in Deeds from Amended Schedule to B.B.&S. Treated Lumber Corporation, recorded on February 22, 1994 at Liber 8816 on page 241, and from Joseph Frederick Gacca to B.B.&S. Creosote Lumber Company, Inc., recorded on April 14, 1978 at Liber 8018 on page 101; and from Joseph Frederick Gacca to B.B.&S. Creosote Lumber Co., Inc., recorded on December 26, 1975 at Liber 8196 on page 592; and from Frederick Lawrence Schuler to B.B.&S. Treated Lumber Corp., recorded on June 21, 1983 at Liber 8376 on page 159 as all can be found in the Suffolk County Clerk's Office.

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the New York Environmental Conservation Law.

**THE ENGINEERING AND INSTITUTIONAL CONTROLS for the Easement are set forth in more detail in the Site Management Plan ("SMP"). A copy of the SMP may be obtained by any party with an interest in the property. The SMP may be obtained from the New York State Department of Environmental Conservation, Division of Environmental Remediation, Site Control Section, 625 Broadway, Albany, NY 12233 or at [dewebp.dce.state.ny.us](http://dewebp.dce.state.ny.us)**

**DESCRIPTION OF HAZARDOUS WASTE REMAINING BOUNDARY - TOWN OF SOUTHAMPTON RIGHT OF WAY**  
 All that certain plot, piece, or parcel of land considered to be the boundary of hazardous waste remaining on the right of way of Speonk-Riverhead Road, also known as Evergreen Avenue, said parcel situated, lying and being at Speonk, Town of Southampton, County of Suffolk, State of New York as shown on a map prepared by L.K. McLean Associates, P.C. dated July 23, 2012. Said parcel being more particularly bounded and described as follows:

**Beginning** at a point on the westerly boundary line of the aforementioned Speonk-Riverhead Road, said point of beginning being 4282.02 feet northerly along said westerly boundary line of said Speonk-Riverhead Road from a concrete monument fixed at the intersection of said boundary line with the westerly boundary line of Old Country Road;

**Thence**, from said point of beginning, North 02°37'30" West, through the right of way of said Speonk-Riverhead Road, a distance of 50.00 feet to a point on the westerly boundary line of said Speonk-Riverhead Road;

**Thence**, North 02°37'30" East, along said westerly boundary line of Speonk-Riverhead Road, a distance of 20.00 feet to a point;

**Thence**, South 87°22'42" East, through the east right of way of Speonk-Riverhead Road, a distance of 50.00 feet to a point on the first mentioned westerly boundary line of said Speonk-Riverhead Road;

**Thence**, South 02°37'30" West, along said westerly boundary line of Speonk-Riverhead Road, a distance of 20.00 feet to the point of place of beginning.

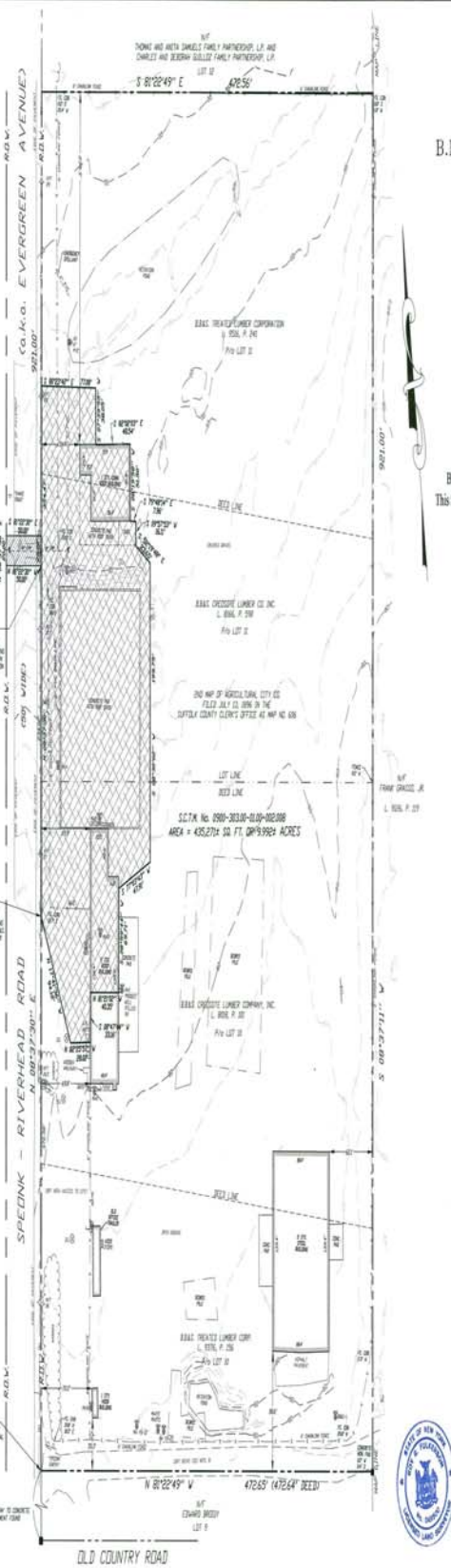
Being 1,000 square feet or 0.023 acre more or less.

- ENGINEERING AND INSTITUTIONAL CONTROLS**
1. LAND USE: THE USE AND DEVELOPMENT OF THE SITE IS LIMITED TO COMMERCIAL AND INDUSTRIAL USES ONLY.
  2. MAINTAIN SITE SECURITY FENCING AND ACCESS CONTROLS AND PROTECTION OF REMEDIATION SYSTEMS FOR THE ENTIRE PARCEL.
  3. GROUNDWATER RESTRICTION COVERS THE ENTIRE PARCEL.
  4. RESTRICTED RESIDENTIAL USE COVERS THE ENTIRE PARCEL. THE BILLS PROPERTY MAY BE USED FOR COMMERCIAL/INDUSTRIAL USE. PROVIDED LONG TERM ENGINEERING AND INSTITUTIONAL CONTROLS IN THE SMP REMAIN IN USE. THE PROPERTY MAY NOT BE USED FOR LESS RESTRICTIVE USE, SUCH AS UNRESTRICTED RESIDENTIAL USE WITHOUT ADDITIONAL PERMITS AND APPROVEMENT OF THE ENVIRONMENTAL SUPERVISOR OF THE COMMISSIONER OF NYSDEC.
  5. RESTRICTED SOILS MANAGEMENT AND EXCAVATION COVERS THE HAZARDOUS SOILS BOUNDARY THAT REMAINS AS SHOWN IN THE LEGEND.
  6. THE POTENTIAL FOR SOIL VAPOR INTRUSION MUST BE EVALUATED FOR ANY EXISTING BUILDING, NEW BUILDING, AND ANY POTENTIAL IMPACTS THAT ARE IDENTIFIED MUST BE MITIGATED.
  7. MANAGEMENT OF SOILS REMAINING WITHIN THE HAZARDOUS WASTE BOUNDARY ARE TO BE HANDLED IN ACCORDANCE WITH THE SMP. REFERENCE TO THE SMP IS NEEDED WHEN WORKING IN THE HAZARDOUS WASTE AREAS.
- ENGINEERING CONTROLS LEGEND**
- HAZARDOUS WASTE REMAINING BOUNDARY - B.B.&S. PROPERTY
  - HAZARDOUS WASTE REMAINING BOUNDARY - TOWN OF SOUTHAMPTON RIGHT OF WAY (R.O.W.)
  - DOWNPIPE ACCESS
  - GATE
  - MONITORING WELL
  - UTILITY MANGROVE
  - ELECTRIC METER
  - UTILITY POLE WITH LIGHT
  - UTILITY POLE
  - OVERHEAD WIRES
  - CATCH BASIN
  - DRAINAGE
  - OVERHEAD ROOF LINE
  - PROPERTY LINE
  - MONUMENT (By Property Line)

**ENVIRONMENTAL EASEMENT AREA ACCESS**  
 THE NYSDEC OR THEIR AGENT MAY ACCESS THE ENVIRONMENTAL EASEMENT AREA AS SHOWN BELOW THROUGH ANY EXISTING STREET ACCESS OR BUILDING INGRESS/EGRESS ACCESS POINT

MADE BY: RLM/MP DATE: 7/25/2012  
 CHECKED BY: RF DATE: 7/25/2012

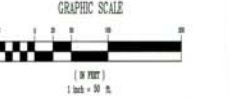
- MAP SYMBOLS LEGEND**
- MONITORING WELL
  - UTILITY MANGROVE
  - ELECTRIC METER
  - UTILITY POLE WITH LIGHT
  - UTILITY POLE
  - OVERHEAD WIRES
  - CATCH BASIN
  - DRAINAGE
  - OVERHEAD ROOF LINE
  - PROPERTY LINE
  - MONUMENT (By Property Line)



ALTA/ACSM LAND TITLE SURVEY OF PROPERTY OF B.B.&S. TREATED LUMBER CORPORATION; B.B.&S. TREATED LUMBER CORP.; B.B.&S. CREOSOTE LUMBER COMPANY, INC.; AND B.B.&S. CREOSOTE LUMBER CO., INC.

2ND MAP OF AGRICULTURAL CITY CO. FILED: JULY 13, 1896 AS MAP NO. 606 LOT 10 & LOT 11 SITUATED AT 1348 SPEONK-RIVERHEAD ROAD SPEONK TOWN OF SOUTHAMPTON SUFFOLK COUNTY, NEW YORK JULY 25, 2012

B.B.&S. TREATED LUMBER SITE - NYSDEC SITE NO. 152123  
 This Survey has been revised with the benefit of Title Report Commitment No. 820213, dated April 2, 2012 and last revised June 5, 2012.



**SURVEYOR'S CERTIFICATION**  
 Certified to: (1) The People of the State of New York acting through their Commissioner of the Department of Environmental Conservation, (2) Owners, B.B.&S. Treated Lumber Corporation, B.B.&S. Treated Lumber Corp., B.B.&S. Creosote Lumber Company, Inc., B.B.&S. Creosote Lumber Co., Inc. and (3) Foster, Notker and Research Services, Inc.

This is to certify that this map or plan and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NPSI, and does not include any other terms of ALTA's Minimum Standard or any other standards as adopted by ALTA and NPSI and in effect on the date of this certification. undersigned further certifies that in my professional opinion, as a land survey registered in the state of New York, the relative positional accuracy of this survey does not exceed that which is specified herein.

I hereby certify that this map was made from an actual survey completed by me on 5/28/2012.

*[Signature]*  
 ROY R. FURBER, P.E.  
 15001-0000

L. K. McLEAN ASSOCIATES, P.C.  
 CONSULTING ENGINEERS & SURVEYORS  
 437 SOUTH COUNTRY ROAD  
 BROOKHAVEN, NEW YORK 11719  
 (517) 258-8668



# 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**

Grantor/Transferor  <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Other	Name (If individual; last, first, middle initial)  Mailing address  City _____ State _____ ZIP code _____	Social security number  Social security number  Federal employer ident. number
Grantee/Transferee  <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input checked="" type="checkbox"/> Other	Name (If individual; last, first, middle initial) The People of the State of New York, acting through their Commissioner of the Department of Environmental Conservation Mailing address 625 Broadway City Albany State NY ZIP code 12233	Social security number  Social security number  Federal employer ident. number 14-6013200

Location and description of property conveyed

Tax map designation			Address	City/Village	Town	County
Section	Block	Lot				
303.00	01.00	002.008	1348 Speonk-Riverhead Road	Speonk	Southampton	Suffolk

Type of property conveyed (check applicable box)

1 <input type="checkbox"/> One-to three-family house 2 <input type="checkbox"/> Residential cooperative 3 <input type="checkbox"/> Residential condominium 4 <input type="checkbox"/> Vacant land	5 <input type="checkbox"/> Commercial/Industrial 6 <input type="checkbox"/> Apartment building 7 <input type="checkbox"/> Office building 8 <input type="checkbox"/> Other _____	Date of conveyance <div style="border: 1px solid black; padding: 2px; display: inline-block;">                     _____ 2012  <small>month      day      year</small> </div>	Percentage of real property conveyed which is residential real property <u>100</u> % <small>(see instructions)</small>
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Condition of conveyance (check all that apply)

- |  |  |   |
|--|--|---|
| a. <input type="checkbox"/> Conveyance of fee interest<br><br>b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____%)<br><br>c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____%)<br><br>d. <input type="checkbox"/> Conveyance to cooperative housing corporation<br><br>e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E) | f. <input type="checkbox"/> Conveyance which consists of a mere change of identify or form of ownership or organization (attach Form TP-584.1, Schedule F)<br><br>g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)<br><br>h. <input type="checkbox"/> Conveyance of cooperative apartment(s)<br><br>i. <input type="checkbox"/> Syndication<br><br>j. <input type="checkbox"/> Conveyance of air rights or development rights<br><br>k. <input type="checkbox"/> Contract assignment | l. <input type="checkbox"/> Option assignment or surrender<br><br>m. <input type="checkbox"/> Leasehold assignment or surrender<br><br>n. <input type="checkbox"/> Leasehold grant<br><br>o. <input type="checkbox"/> Conveyance of an easement<br><br>p. <input checked="" type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)<br><br>q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state<br><br>r. <input checked="" type="checkbox"/> Other (describe) <u>Environmental Easement Pursuant to ECL Art. 71 Title 36</u> |
|--|--|---|

For recording officer's use	Amount received Schedule B., Part I \$ _____ Schedule B., Part II \$ _____	Date received	Transaction number
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**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) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.	\$0.00
2.	\$0.00
3.	\$0.00
4.	
5.	
6.	0

**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) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) .....
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.	\$0.00
2.	
3.	\$0.00

**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 C — Credit Line Mortgage Certificate (Tax Law, Article 11)**

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 a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) 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 or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - 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 of debt or obligation secured by 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.)*

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, 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.

OFFICE OF GENERAL COUNSEL

Grantor signature	Title	Grantee signature
		 Iyonna M. Ward SENIOR ATTORNEY
		New York State Department of Environmental Conservation
Grantor signature	Title	Grantee signature
		Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in New York City, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **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 \_\_\_\_\_ to \_\_\_\_\_ (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



# 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

### 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).

- 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



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.

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 identity 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

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.

## 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.

**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.

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**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.