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NEW YORK CITY DEPARTMENT OF FINANCE

UPDATE ON AUDIT ISSUES

RPTT

**Real Property Transfer Tax Pursuant to
Marital Settlement/Divorce Agreement**

June 2006

I. ISSUE

*Whether transfer pursuant to marital settlement agreement or divorce is subject to Real
Property Transfer Tax.*

I. CITE

Pursuant to 19 RCNY Section 23-03 (d) (3), formally Article 24 (c) of the Real Property Transfer Tax
regulations, a transfer of real property from one spouse to the other, pursuant to the terms of a sep-
aration agreement or divorce decree, is subject to transfer tax. In the absence of evidence estab-
lishing the consideration, it is presumed that the consideration for the conveyance, which includes
the relinquishment of marital rights, is the fair market value of the interest in the property conveyed.

Example:

The property type will affect the taxable consideration. If the amount of consideration for
the percentage interest in the property conveyed is not stated in the agreement, the fair
market value of the interest in the property at the time of transfer must be treated as the tax-
able consideration. However, if the property is a 1-, 2-, or 3-family house, a residential co-
op apartment, or a residential condo, and a pre-existing mortgage on the property qualifies
as an excludible lien, the total consideration is reduced by the corresponding percentage
interest in the excludible lien in determining the taxable consideration.

I. RECOMMENDATION

- Mailing addresses and telephone numbers where the grantor and grantee can be con-
tacted **after the transfer** must be reported on the return.
- The correct condition of transfer must be checked.
- The correct percentage of interest conveyed must be reported.
- The correct property type must be checked.
- The details of consideration must be filled out properly to determine the taxable consid-
eration before completing the computation of tax.

Attach a copy of the agreement for conveying the property.

Attach a copy of the mortgage statement to verify the mortgage balance at the time of trans-
fer.