

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-2105(a) of the Administrative Code of the City of New York, I hereby promulgate the within amendments to the Rules Relating to the Filing of Real Property Transfer Tax. These rules were published in proposed form on May 11, 2007. A hearing for public comment was held on June 11, 2007. In response to comments received, revisions were made to clarify the definitions of “confirmation” and “return,” the mailing rule and the fact that both the grantor and grantee are jointly responsible for filing both the electronic and paper return.

/s/ Martha E. Stark
Commissioner of Finance

Note: New matter underscored; old matter in brackets [] to be deleted.

Amendments to Rules Relating to the Real Property Transfer Tax

Section 1. New definitions of “confirmation,” “electronic return,” “filed electronically,” “paper return” and “return” are added to section 23-02 (“Definitions”) of 19 RCNY Chapter 23 (Rules Relating to the Real Property Transfer Tax) to read as follows:

Confirmation. “Confirmation” shall mean the document or electronic transmission that will be issued by the Commissioner of Finance on the date that the electronic format of the return is deemed received by the Department of Finance and indicates the date upon which the electronic return is so filed with the Department of Finance, and may be in the form of a number or other indication entered by the Department on a copy of the electronic return.

Electronic return. “Electronic return” shall mean the completed real property transfer tax return in the electronic format prescribed by and formatted by the Department of Finance and available through the internet website of the Department of Finance, and filed electronically through the Department of Finance website.

Filed electronically. “Filed electronically” shall mean submitted to the Department of Finance through, and in accordance with the instructions found on, the internet website of the Department of Finance.

Paper return. “Paper return” shall mean the paper copy of the completed real property transfer tax return as it is printed after completion in electronic format or by other means as designated by the Commissioner of Finance, bearing the original signatures of the grantor or the grantor’s agent and the grantee or the grantee’s agent.

Return. “Return” shall mean the electronic return together with the paper return as they are defined in this section, and together with any other documents required by these rules to be attached to the paper return.

§2. Subdivision (a) of section 23-09 of such rules is amended to read as follows:

(a) A joint return shall be filed by both the grantor and the grantee, both electronically and in paper format for each deed, instrument, or transaction, whether or not a tax is due thereon. Thus, a return must be filed although the consideration for the deed, instrument, or transaction is \$25,000 or less. The actual amount of the consideration for each deed, instrument, or transaction must be set forth on the return at the place provided therefor, regardless of the amount of the consideration. Where the consideration is \$400,000 or more, a copy of the contract of sale or closing statement, if any, must be attached to the paper return. A return need not be filed for the grant of a leasehold interest in a 1, 2 or 3 family house or an individual dwelling unit except where tax is owed or the lease is to be recorded. In the case of a transfer of stock in a cooperative housing corporation made before August 1, 1989, other than the initial transfer of stock by the corporation or sponsor, if the owner did not hold the shares in connection with, incidental to or in furtherance of a trade, business, profession, occupation or commercial activity, the grantor and grantee may jointly file an affidavit of non-commercial use in lieu of a return. The return must be filed with the Commissioner of Finance, both electronically and by delivering [the same] a paper

form of the return with an original signature as prescribed by this chapter to the Register for transmittal to the Commissioner of Finance, except [that in the case of transfers of controlling economic interests in real property, the return must be filed with the Department of Finance, Operations Division, Real Property Transfer Tax Group] as provided in subdivision (c) of this section with respect to transfers of property in Staten Island. The return must be so filed at the time of payment of the tax, or, in the case of a deed not subject to tax, before the recording of such deed. In the case where a transfer of an economic interest in real property is not subject to tax or the tax is zero (because of available credits), the return must be filed within 30 days after such transfer.

The form of return shall be prescribed by the Commissioner of Finance and shall contain such information as the Commissioner deems necessary for the proper administration of the law. The electronic return shall be submitted in the format prepared by the Department of Finance and located on the Department of Finance Internet website. A confirmation will be issued by the Commissioner of Finance upon receipt of an electronic return. The paper return must be signed under oath by both the grantor or his agent and the grantee or his agent. Upon the filing of such return in the case of a deed, evidence thereof shall be affixed to the deed by the Register to indicate that a tax return has been filed. The Commissioner of Finance may provide for the use of stamps as evidence of payment and that they shall be affixed to the deed before it is recorded. If no tax is paid at the time of the recording of the deed, the Register may indicate on the deed that no tax was paid. Where no return is filed at the time of the recording of the deed, the Register may indicate on the deed that no return was filed.

Where a deed, instrument, or transaction has more than one grantor or more than one grantee, the paper return may be signed by any one of the grantors and by any one of the grantees provided, however, that those not signing shall not be relieved of any liability for the tax imposed by the law.

[If either the grantor or grantee has failed to sign the return, it shall be accepted as a return, but the party who has failed to sign the return or to file a separate return shall be subject to the penalties applicable to a person who has failed to file a return and the period of limitations for assessment of tax or of additional tax shall not apply to such party.

Where a deed, instrument, or transaction has more than one grantor or more than one grantee, a return may be signed by any one of the grantors and by any one of the grantees provided, however, that those not signing shall not be relieved of any liability for the tax imposed by the law.

The form of return shall be prescribed by the Commissioner of Finance and shall contain such information as he deems necessary for the proper administration of the law. The return must be signed under oath by both the grantor or his agent and the grantee or his agent. Upon the filing of such return in the case of a deed, evidence thereof shall be affixed to the deed by the Register to indicate that a tax return has been filed. If no tax is paid at the time of the recording of the deed, the Register may indicate on the deed that no tax was paid. Where no return is filed at the time of the recording of the deed, the Register may indicate on the deed that no return was filed. The Register shall, at such times as may be mutually agreeable to the Register and the Commissioner

of Finance, transmit to the Commissioner of Finance all returns filed with the Register, including receipted returns, returns filed without payment of taxes, and information of deeds recorded without filing of returns.]

§3. Subdivision (c) of section 23-09 of such rules is amended to read as follows:

(c) The [acceptance by the Register of a return for filing shall in no way indicate the propriety or correctness of the return. Except in the case of transfers of controlling economic interests in real property or transfers of shares or interests in a corporation or other entity formed for the purpose of cooperative ownership of real property, the] Register shall accept [any] a return offered for filing, provided [it] the paper return is signed under oath by the grantor or his agent or by the grantee or his agent, unless it appears that the return is insufficient on its face, as where the return shows that the amount of the consideration paid or required to be paid without deductions is less than the amount of mortgages or other liens or encumbrances. If either the grantor or grantee has failed to sign the paper return, it shall be accepted as a return, but the party who has failed to sign the paper return or to file and sign a separate paper return shall be subject to the penalties applicable to a person who has failed to file a return and the period of limitations for assessment of tax or of additional tax shall not apply to such party. The Register is also authorized to reject a return [which] that states that there was no consideration for the deed unless there is attached to such return a statement setting forth the grounds upon which it is claimed that there was no consideration. The acceptance by the Register of a return for filing shall in no way indicate the propriety or correctness of the return. The issuance of a confirmation by the Commissioner of Finance upon receipt of an electronic return shall in no way indicate the propriety or correctness of the electronic return and is not evidence of a completed return nor evidence that the paper return has been completed, filed or received by the Department of Finance. If a return or affidavit required by the law is not filed or if a return or affidavit when filed is incorrect or insufficient on its face the Commissioner of Finance shall take the necessary steps to enforce the filing of such a return or affidavit or of a corrected return or affidavit. The Commissioner of Finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

[Returns are] The electronic return is required to be filed electronically, and the paper return is required to be filed at the office of the Register in the county where the deed is or would be recorded, except that with respect to a transfer relating to a property in Staten Island, the filing requirement may be met only by (i) filing a real property transfer tax return on the paper form prescribed by the Commissioner of Finance in the office of the Richmond County Clerk, or (ii) where a return is not filed at the time of the recording of a deed, or the deed is not recorded, the return may instead be filed in any office of the City Register. In the case of transfers of controlling economic interests in real property or transfers of shares or interests in a corporation or other entity formed for the purpose of cooperative ownership of real property, returns or affidavits, whichever are applicable, [may only be filed with the Department of Finance, Operations Division, Real Property Transfer Tax Group, at the address provided on the return] must be filed electronically, and the paper return must be filed at the office of the City Register in the county in which the affected property is located, except that for such a transfer relating to property in Staten Island, the paper return must be filed in any office of the City Register. The

locations of the Register's offices are as follows:

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| Manhattan | (New York County) [31 Chambers Street] <u>66 John Street, 13th Floor</u> New York, N.Y. [10007] <u>10038</u> |
| Bronx | 1932 Arthur Avenue, <u>3rd Floor</u> Bronx, N.Y. 10457 |
| Brooklyn | (Kings County) Municipal Building <u>210 Joralemon Street, Room 2</u> Brooklyn, N.Y. 11201 |
| Queens | (Queens County) [90-27 Sutphin Boulevard] <u>144-06 94th Street</u> Jamaica, N.Y. 11435 |
| Staten Island | (Richmond County) <u>Richmond County Clerk</u> [County Clerk's Office] County Court House, <u>Room 103</u> Staten Island, N.Y. 10301 |

[Where a return is not filed at the time of the recording of a deed, or the deed is not recorded, the return may instead be filed with the Department of Finance, Operations Division, Real Property Transfer Tax Group, at the address provided on the return.

Forms of returns or affidavits will be furnished on request by the Commissioner of Finance or Register.

The Commissioner of Finance may require amended returns to be filed within twenty days after notice and to contain the information specified in the notice.

If a return or affidavit required by the law is not filed or if a return or affidavit when filed is incorrect or insufficient on its face the Commissioner of Finance shall take the necessary steps to enforce the filing of such a return or affidavit or of a corrected return or affidavit.

The Commissioner of Finance may provide for the use of stamps as evidence of payment and that they shall be affixed to the deed before it is recorded.]

§4. Subdivision (d) of section 23-09 of such rules is amended to read as follows:

(d) [Electronic filing. Pursuant to 19 RCNY § 17-03, the Commissioner may authorize the electronic filing of returns and reports required by this section.] Request for waiver of the electronic filing requirement. The Commissioner of Finance, may, for good cause and in his or

her discretion, waive the requirement that the real property transfer tax return be filed electronically and permit the real property transfer tax return to be filed by means of a paper form or in such other manner as the Commissioner of Finance may designate. A request for waiver of the electronic filing requirement must be made in writing no later than ten days prior to the last day permitted by law for the filing of such return. Any return filed in paper format or by any other designated means must be filed in accordance with the provisions of these rules, with the New York City Department of Finance at such address and in the form and manner as may be designated by the Commissioner.

§5. A new subdivision (e) is added to section 23-09 of such rules to read as follows:

(e) Mailing the return. In the event that the Commissioner has waived the electronic filing requirement pursuant to §23-09(d) of this section and will accept a real property transfer tax return filed in paper format, any return required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of §11-2105 of the Administrative Code, or any rule enacted relating to the administration of such provision, shall when mailed, be deemed delivered as provided in §11-2116 of the Administrative Code. The receipt of the mailed return by the Department of Finance shall in no way indicate the propriety or the correctness of the return.

§6. The first unnumbered paragraph of section 23-11 of such rules is amended to read as follows:

Every grantor and grantee is required to keep complete records of conveyances of real property or economic interests therein. Such records shall include copies of the contract of sale, the title report, if any, the paper return filed, and confirmation of electronic return filed, waiver of the electronic filing requirement pursuant to section 23-09(d) of these rules, if applicable, or affidavit filed, records showing the amount of liens and encumbrances on the realty at the time of delivery of the deed, the closing statement, and the general books of account of a person which would reflect the sale or purchase of real property or economic interests therein. Such records shall be made available for inspection and examination at any time upon demand by the Commissioner of Finance or his duly authorized agent or employee and shall be preserved for a period of three years, except that the Commissioner of Finance may consent to their destruction within that period or may require that they be kept longer.

Basis and Purpose of Amendments

Section 11-2105 of the Administrative Code of the City of New York requires that a real property transfer tax return be filed for grants, assignments, transfers, or surrenders of real property in New York City, including the sale or transfer of at least a 50 percent ownership interest in a corporation, partnership, trust, or other entity that owns or leases real property; initial transfers of shares of stock in cooperative housing by the sponsor; and subsequent transfers of co-op stock. In certain cases the payment of the real property transfer tax must accompany the return jointly filed by a grantor or the grantor's agent and the grantee or the grantee's agent and the filing of the return is a condition precedent to the recording of a deed, lease, assignment or surrender of lease or other instrument effecting a conveyance or transfer subject to such taxes in New York City. The information provided on the return is used by the Department of Finance in recording such conveyances of real property in the City.

Chapter 385 of the Laws of 2006 amended section 11-2105 of the Administrative Code to authorize the New York City Commissioner of Finance to require by rule that real property transfer tax returns be filed by electronic means, in addition to the paper format of the return with the original signatures which must be provided in accordance with the current law. This rulemaking action amends the Department of Finance rules to require that real property transfer tax returns be filed electronically. As authorized by chapter 385 of the Laws of 2006, these amendments provide that the Commissioner may for good cause waive the electronic filing requirement.

In addition, merely for clarification, some of the amendments re-order the unnumbered paragraphs within a subdivision.