



# Instructions for Form IT-2663

## Nonresident Real Property

### Estimated Income Tax Payment Form

**IT-2663-I**  
(12/11)

### Important information for same-sex married spouses

The *Marriage Equality Act*, which took effect on July 24, 2011, provides that all marriages, whether of same-sex couples or different-sex couples, will be treated equally under the laws of New York and have the same state tax benefits and requirements. Therefore, for tax years 2011 and after, you must recompute your federal income tax return, including any gain or loss on the sale or transfer of real property, as if you had been able to use a married filing status (*federal as-if-married return*).

You must apply all the federal rules for married taxpayers (for example, IRC section 121 exclusion of gain from sale of principal residence rules) when recalculating your federal gain or loss on the sale or transfer of real property. See our Web site for additional information.

**Note:** Any reference in these instructions to your *federal income tax return, federal amount, etc.*, refers to your *federal as-if-married return*.

In addition, the term *spouse* should be read as gender-neutral and includes a person in a marriage with a same-sex spouse. The term *married* includes a marriage between same-sex spouses.

### General information

Effective for sales or transfers of a fee simple interest in real property on or after September 1, 2003, nonresident individuals, estates, and trusts are required to estimate the personal income tax liability on the gain, if any, from the sale or transfer of certain real property located in New York State. Unless the transfer is exempt as explained below, you must use Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, to compute the gain (or loss) and pay the full amount of estimated tax due, if applicable. **Use 2012 Form IT-2663 for sales or transfers of real property that occur after December 31, 2011, but before January 1, 2013.**

Nonresident individuals, estates, and trusts should take into account the amount of estimated tax paid with Form IT-2663 when they file their 2012 New York State income tax return. Any tax refund that is due can be claimed at that time. Estimated tax payments made with Form IT-2663 cannot be refunded prior to the filing of an income tax return.

The requirement for payment of estimated 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. Additionally, the requirement may not apply to certain sales or transfers of real property even if the individual, estate, or trust is a nonresident at the time of the sale or transfer (Tax Law section 663(c)). See *Exempt sales or transfers*, below.

New York State 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*, Schedule D must be completed for sales or transfers of property by New York State residents and nonresidents claiming exemption from the payment of estimated personal income tax under Tax Law section 663. For more information, see Form TP-584 and its instructions.

**Note:** Any deed for a fee simple interest in real property by an individual, estate, or trust **should not be** recorded by any recording officer, unless **each** transferor/seller listed

as a grantor/transferor on Form TP-584, Schedule A (or an attachment to Form TP-584) has signed Form TP-584, Schedule D **or** presents to the recording officer Form IT-2663, with full payment of estimated personal income tax due, if any.

Do not use Form IT-2663 for the sale, transfer, or other disposition of shares of stock by a nonresident in a cooperative housing corporation. See Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*.

### Exempt sales or transfers

A nonresident is not required to file Form IT-2663 if any of the following apply:

- The property being sold or transferred qualifies in total as the principal residence of the transferor/seller within the meaning of Internal Revenue Code (IRC) section 121 (Tax Law section 663(c)(1)). IRC section 121 relates to the federal income tax exclusion of gain on the sale of a principal residence.

If the property does not qualify in total as the principal residence of the transferor/seller, see *Property used in part as a principal residence* below.

**Note:** Property 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.

- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in lieu of foreclosure with no additional consideration (Tax Law section 663(c)(2)).
- 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 (Tax Law section 663(c)(3)).

To claim exemption from the payment of estimated personal income tax under Tax Law section 663(c), see Form TP-584, Schedule D.

### Special rules

#### 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.

#### Property used in part as a principal residence

If a portion of the real property being sold or transferred qualifies as your principal residence and a portion of the property was used for any other purpose, the payment of estimated personal income tax is required on the gain allocable to the portion of the property that does not qualify as your principal residence.

To exclude the gain on the portion of the property used as your principal residence, you generally must have owned and lived in the property as your main home for at least two years during the five-year period ending on the date of the sale or transfer.

**Method of allocation** — For purposes of determining the amount of gain allocable to the portion of the property used

as your principal residence and the portion used for any other purpose, you must allocate the basis and the amount realized between the portions using the same method of allocation as used for federal personal income tax purposes. (See Form IT-2663, page 2, *Worksheet for Part 2*, line 18.)

### Installment sales

You are required to compute the total gain, if any, on the sale of the real property. However, you pay estimated personal income tax only on that portion of the gain that will be reported on your 2012 federal income tax return.

For payments of estimated income tax due on installment payments received in tax years after 2012, you must use either Form IT-2105, *Estimated Income Tax Payment Voucher for Individuals*, or Form IT-2106, *Estimated Income Tax Payment Voucher for Fiduciaries*. For more information, see Form IT-2105 or Form IT-2106 and their instructions.

### Estates and trusts

Estates and trusts are required to estimate the income tax due on the entire gain, if any, on the sale or transfer of real property, without regard for any distributions of the gain to beneficiaries that may occur during the tax year of the sale.

When fiduciaries file the estate's or trust's income tax return for the year, they may elect to have any portion of estimated tax payments allocated to any of the beneficiaries. Fiduciaries making this election must file Form IT-205-T, *Allocation of Estimated Tax Payments to Beneficiaries*, to show the allocation of any estimated tax payment among the beneficiaries. See the instructions for Form IT-205-T for information about how to file and when to file Form IT-205-T.

### Definitions

*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.

*Sale or transfer of real property* means the change of ownership of a fee simple interest in real property by any method.

*Principal residence* means your main home within the meaning of IRC section 121 for which you are allowed to 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, or condominium.

### How and where to file

Submit your completed Form IT-2663 and full payment of estimated tax due, if any, to the recording officer at the time the deed is presented to be recorded. Do not separate Form IT-2663 from the payment voucher (Form IT-2663-V). Print your name, social security number (SSN) or employer identification number (EIN), and **2012 IT-2663-V** on your payment (see *Instructions for Form IT-2663-V* on page 3 of these instructions).

### Line instructions for Form IT-2663

A separate Form IT-2663 must be filed by a nonresident for each sale or transfer of real property in New York State, unless the nonresident transferor/seller is exempt from the requirement to pay estimated tax as provided for under Tax Law section 663(c) (see Form TP-584, Schedule D).

### Multiple transferors/sellers

If more than one nonresident transferor/seller (as listed on Form TP-584 or an attachment for Form TP-584) is required

to file Form IT-2663, each transferor/seller must complete and submit a separate Form IT-2663. If a payment of estimated personal income tax is required, each Form IT-2663 must have a separate check or money order. Married couples who are nonresident transferors/sellers, and who transfer or sell their interest in New York State real property, may file one Form IT-2663 and use one check or money order.

### Item A

Mark an **X** in the applicable box to indicate whether the transferor/seller is an individual, estate, or trust. If the transferor/seller is a revocable living trust, or any other trust in which an individual is treated as the owner of the trust, mark an **X** in the box for *an individual*. For all other estates and trusts, mark an **X** in the box for *an estate or trust*.

### Item B

If you are reporting the sale or transfer of real property as an installment sale for federal income tax purposes (you are using federal Form 6252, *Installment Sale Income*, to report the sale), mark an **X** in the Yes box on item B. Give the duration of the installment agreement in months if the duration of the agreement is for 12 months or less or in years if the duration of the agreement is for more than 12 months.

### Item C

If only a portion of the real property being sold or transferred qualifies as your principal residence for federal income tax purposes, mark an **X** in this box.

## Part 1 — Sale or transfer information

For individuals, print your full name, SSN, and address. If you are married and filing one Form IT-2663, print your spouse's name and SSN in the spaces provided.

For estates and trusts, print the name of the estate or trust and enter the EIN. Enter the name of the fiduciary on the second name line.

If your mailing address is a PO box, you must also include your street address.

**Foreign addresses** — Enter the information in the following order: city, province or state, and then country (all in the *City* box). Follow the country's practice for entering the postal code. **Do not abbreviate the country name.**

### Location and description of property transferred

Enter a description of the property (such as apartment building or warehouse), the address, including the county, and the tax map number if known.

### Date of conveyance

Enter the date of the conveyance from Form TP-584, Schedule A.

## Part 2 — Estimated tax information

**Note:** If the transferor/seller is not required to recognize any gain or loss with respect to the transfer under provisions of the Internal Revenue Code (IRC) (except for section 121), do not complete Part 2, *Estimated tax information*, or *Worksheet for Part 2*. Continue with Part 3.

**You must complete *Worksheet for Part 2* on page 2 of Form IT-2663 before completing this part.**

**Line 1** — Enter the amount from *Worksheet for Part 2*, line 15.

**Line 2** — Enter the amount from *Worksheet for Part 2*, line 17. If the amount on line 17 is greater than zero, enter the **total**

amount of gain on the sale or transfer. If the sale or transfer of real property does not result in a gain or results in a loss, enter **0**.

**Line 3** — Enter the amount of estimated tax due from *Worksheet for Part 2*, line 20. Also enter this amount on Form IT-2663-V, on page 3 of Form IT-2663. You **must** remit this amount to the recording officer with this form. If there is no payment of estimated personal income tax due, enter **0** on this line and on Form IT-2663-V. In addition, complete Part 3.

### Part 3 — Nonpayment of estimated tax by a nonresident upon sale of real property

If you complete *Worksheet for Part 2* on Form IT-2663, page 2, and line 17 of the worksheet results in a loss (less than or equal to zero), mark an **X** in box 4A and continue with these instructions.

If you are not required to recognize any gain or loss with respect to the sale or transfer, mark an **X** in box 4B, complete the *Brief summary of the transfer* section, and continue with these instructions.

**Example:** *If you exchange real property for real property of a like kind and no gain or loss is recognized under IRC section 1031 (you will file federal Form 8824, Like-Kind Exchanges, for federal income tax purposes), mark an X in box 4B, give a brief summary of the exchange, and indicate that the transaction is an IRC section 1031 like-kind exchange.*

You **must** complete Form IT-2663-V on page 3 of Form IT-2663.

**Note:** Although the payment of estimated tax may not be required upon the sale or transfer of New York State real property, the transferor/seller may still be required to file a New York State income tax return to report the sale or transfer.

For more information on filing requirements for nonresidents, see our Web site.

### Part 4 — Signature

Form IT-2663 must be signed by the nonresident transferor/seller (an individual, a trustee, an executor, or other fiduciary of an estate or trust). If you are married and filing one Form IT-2663, both spouses must sign in the spaces provided. In addition, Form IT-2663 may be signed by an authorized agent with a power of attorney.

### Instructions for Form IT-2663-V

#### Do not detach Form IT-2663-V from Form IT-2663.

**Note:** This voucher must be completed by the transferor/seller even if there is no payment of estimated personal income tax due.

For individuals, enter your SSN and mark an **X** in the *Individual* box. Enter your full name, your spouse's full name and SSN if you are married and filing a joint return, and your address.

For estates and trusts, enter the EIN of the estate or trust and mark an **X** in the *Estate/trust* box. Enter the name and title of the fiduciary on the second name line.

Make sure that your name or the name of the estate or trust is spelled correctly. An individual should show the first name, middle initial, then last name (for example, John O. Smith). Your name or the name of the estate or trust **must** agree with the name on your New York State income tax return.

**Foreign addresses** — Enter the information in the following order: city, province or state, and then country (all in the *City, village, or post office* box). Follow the country's practice for entering the postal code. **Do not abbreviate the country name.**

Enter the date of conveyance from Form IT-2663, Part 1.

Enter the amount of estimated tax due from Form IT-2663, Part 2, line 3. If zero, enter **0**.

### Payment information

Print your name, SSN or EIN, and **2012 IT-2663-V** on your payment. You must remit the full payment of estimated tax as shown on Form IT-2663, line 3 without regard to any prior credits or payments of estimated tax for the tax year. Make your check or money order payable to **NYS Income Tax**. Do not detach this voucher from the rest of the form. Do not combine this payment with payment of any other tax or fee; it must be a separate check or money order.

**Fee for payments returned by banks** — The law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department won't charge the fee.

If your payment is returned, we will send a separate bill for \$50 for each return or other tax document associated with the returned payment.

### 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 Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

### Need help?



Visit our Web site at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features



#### Telephone assistance

Automated income tax refund status: (518) 457-5149

**Personal Income Tax** Information Center: (518) 457-5181

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082