

ROYAL ABSTRACT

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UPDATE MEMORANDUM REGARDING THE COMMERCIAL MANSION TAX LAW

Please be advised that earlier this week the Division of Taxation published revisions to the RTF-1 and RTF-1EE on their website (www.state.nj.us/treasury/taxation) along with a new form (RTF-4). The revisions appear to be an effort by Taxation to implement the amendments made to the Mansion Tax law during the budgetary process. In addition, the Division also published a memorandum dated July 18th entitled “Amendatory Realty Transfer Fee Legislation: Chapter 33, Laws of 2006”. We have provided all three of these with this memorandum for your quick reference.

Unfortunately, there remain several issues which still require clarification; however we are working with our underwriters towards disseminating the most current information available. We will continue to provide updated information as it becomes available.

Seller’s Affidavit (RTF-1)

The Affidavit of Consideration for Use by Seller (RTF-1). As it’s name implies, this is the form now required under NJSA 46:15-7.2(d)(1) to be filed with every deed transferring property classified for assessment purposes as Class 4 [including 4A (Commercial), 4B (Industrial), and 4C (Apartment/cooperative)]. This form must be filed regardless of the amount of consideration for the transfer. THIS FORM MUST BE FILED IN DUPLICATE.

Please note that while the “Mansion Tax” has only been expanded to Class 4A properties, as of this writing, the Division of Taxation is stating that the RTF-1 (Seller’s Affidavit of Consideration) must be filed with deeds for all Class 4 properties, regardless of the consideration.

Buyer’s Affidavit (RTF-1EE)

According to Stephen M. Sylvester, author of the memorandum referred to above, an Affidavit of Consideration for Use by Buyer (RTF-1EE) is “required to be annexed to and recorded with deeds transferring Class 4 property of any type (commercial, industrial, or apartment properties) . . . whether the real property transfer is taxable or exempt from payment of the 1% fee.” THIS FORM MUST ALSO BE FILED IN DUPLICATE.

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Please note that while the "Mansion Tax" has only been expanded to Class 4A properties, as of this writing, the Division of Taxation is stating that the RTF-1EE (Buyer's Affidavit of Consideration) must be filed with deeds for all Class 4 properties, regardless of the consideration.

Protest of Fee Assessment (RTF-4)

The Division of Taxation has also published the form which will enable grantees to claim the exemption from the "Mansion Tax" in those situations where the transfer of affected property is incidental to a corporate merger or acquisition and the equalized assessed value of the real property is less than 20% of the total value of all assets exchanged in the merger or acquisition [NJSA 46:15-7.2(b)(2)]. This form, along with the required attachments must be submitted in duplicate with the deed transferring the affected real property. The associated "Mansion Tax" is not paid; however all other recording fees/taxes/charges must be paid.

In a nutshell, until we receive further clarification from the Division of Taxation:

1. All Deeds transferring an interest in real property which is classified as Class 4A, 4B, or 4C, regardless of the consideration for the transfer must be accompanied by BOTH a Seller's Affidavit of Consideration (RTF-1) and a Buyer's Affidavit of Consideration (RTF-1EE).
2. Each form must be submitted in duplicate.
3. To be sure you are using the most current form, it is recommended that the RTF-1 and RTF-1EE be obtained from the Division of Taxation's website each time they are needed rather than downloading one set and photocopying it for each transaction to which it may apply.
4. This applies to all deeds received by the Clerks/Registers for recording on and after August 1, 2006. Accordingly, it is recommended that these practices be implemented immediately.

Please be reminded that it our office will not determine or insure the proper or correct classification of the premises as that information is not a matter of public record as defined in the title insurance policy. Grantees and their attorneys seeking assistance in making a determination of the property's classification should contact the local tax assessor.

As always, please feel free to contact a member of our staff with any questions you may have.

PS: On an unrelated matter, it has been brought to our attention that the County Recorders have decided as a body to **require that all checks of \$10,000.00 or more must be certified** regardless of their source (i.e. there is no special treatment for trust funds). We will continue to keep you apprised of information on this topic as it develops.

Dated: July 27, 2006