

LEGAL BULLETIN

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UPDATED INSTRUCTIONS AND REVISIONS TO REALTY TRANSFER FEE /MANSION TAX FORMS

Since the enactment of P.L. 2006, c.33, the law that effectively expanded the "Mansion Tax" to transfers of Class 4A commercial properties, the title industry has sought clarification from the Division of Taxation on the proper use of the new RTF forms created to implement the changes in the law. Attached is a copy of an Amended Memorandum from the Division of Taxation dated August 11, 2006, directed to the County Clerks in order to provide additional direction and information.

The Division of Taxation has also amended the RTF-1 (Sellers Affidavit of Consideration), RTF-1EE (Buyers Affidavit of Consideration) and RTF-3 (Claim for Refund) forms. The revised forms are attached to this Bulletin for your information. The Division of Taxation has warned that additional revisions to the RTF forms may be ongoing for the next few weeks. You must therefore continue to check the Division's website [<http://www.state.nj.us/treasury/taxation>] for the most updated versions of these forms, and for further instruction regarding form filing requirements.

The following is a synopsis of the form revisions and filing requirements:

RTF-1 - Affidavit of Consideration for use by Seller

The RTF-1 is to be submitted and recorded with a deed when:

1. Seller is claiming a full or partial exemption from the payment of realty transfer tax; and/or
2. When a deed transfers Class 4 property [4A, 4B or 4C], even if the consideration does not exceed \$1 million.

The RTF-1 has been amended to add item (3), where the specific classification of the property must be circled. If the deed transfers Class 4A [commercial] property, then the “equalized valuation” must be calculated and entered under item (3A). For purposes of making this calculation, the “Director’s Ratio”, which is promulgated annually on or before October 1, is available on the Divisions website at <http://www.state.nj.us/treasury/taxation/lpt/lpyvalue.htm>, or on page 252 of the 2006 New Jersey Lawyers Diary and Manual, using the second column of figures listed after the municipalities.

The Division has indicated that it will use the equalized valuations entered on deeds for the purpose of conducting audits of Class 4A sales. **The Realty Transfer Fee will continue to be based on the consideration for the transfer, however, and not upon the equalized value.**

The RTF-1 also now includes blanks at the top left of the form where the Municipality of Property Location, and the County Municipal code must be inserted. The County Municipal codes are listed at <http://www.state.nj.us/treasury/taxation/pdf/lpt/cntycode.pdf>. A copy of that list is attached hereto.

RTF-1EE - Affidavit of Consideration for use by Buyer

The instructions for filing form RTF-1EE state that it is to be submitted and recorded with a deed when:

1. The consideration for the transfer exceeds \$1 million, or the equalized value of a Class 4A property exceeds \$1 million;
2. The grantee claims an exemption from payment of the 1% “mansion tax” under item (2) (B) of the form.

Although the form itself [see instruction no. 2 to the form] limits its use to the above situations, the Division of Taxation has taken the position that the equalized valuation must be calculated on transfers of all Class 4A properties. Therefore, as a practical matter, the RTF-1EE form should be completed and submitted with all deeds transferring Class 4A properties so that the equalized valuation calculation will be disclosed. The tax will continue to be paid, however, on the deed consideration and not the equalized valuation.

The RTF-1EE, like the RTF-1, now also includes blanks to be completed with the Municipality of Property Location and County Municipal Code, located at the top left of the form near the jurat.

RTF-3 – Claim for Refund

Buyers who pay the 1% on deeds for the transfer of Class 4A [commercial] property recorded on or after November 15, 2006 which transfer real property pursuant to a contract of sale that was fully executed before July 1, 2006 may apply for a refund by filing a claim with the Division of Taxation within one year of the recording of the deed. The Division requires the filing of the completed RTF-3 form; copy of the deed; copy of the fully executed contract of sale; the executed settlement statement and “any additional documentation necessary to process the refund claim.” The Division has omitted its prior requirement that the contract of sale be recorded.

We will keep you advised of any updates to the above information as it is made available. We also recommend that you visit the Division of Taxation’s website for possible future amendments to the RTF forms and additional information on required procedures.