

TAKE JUDICIAL NOTICE

New York City Imposing Penalties For Late Filing of RPT Returns

November 29, 2011

We have all been aware that failure to pay the New York City Real Property Transfer Tax within 30 days of the delivery date of the deed, leads to the imposition of interest and penalties. The most important date when reviewing a deed is the date of delivery, as title passes on delivery, and not on recording. All deeds, however, are silent as to when delivery has taken place. Absent proof of delivery, the City takes the position that the dated date is also the delivery date. The City, probably as a means to increase revenue, is now assessing interest and penalty when the RPT is filed 30 days after the deed's dated date, even though the transfer tax was paid prior to the expiration of the 30 day period. The City Register takes the position that payment and filing are two different things.

What makes this problematic is that the City Register's Office has no log in procedure for documents. You cannot get a copy of a deed date stamped. Again, the Register's position is that everything is recorded within 2 or 3 days, so log in is not necessary. The City relies on the New York City Administrative Code [Section 11-2114 \(b\)](#).

If the City determines that a late filing has occurred, the seller will receive a NYC Notice of Penalty and Interest Due for Late Filing of Documents. The penalty is five percent of the original tax due for each month or fraction of a month that the filing is deemed late, not to exceed twenty-five percent.

In all cases concerning payment and filing of the RPT tax forms, the grantee is liable for any amounts not paid by the grantor. (Rule 23-08)

The fact that the Register accepts a return does not indicate that the City agrees with the correctness of the information contained within the return. In almost all cases, the returns are not audited at the time of filing. More usual is for an audit to commence two to two and a half years after the return was filed (the City has three years to audit). If the audit is successful, and the tax is increased, then interest and penalties will be imposed, dating back to the dated date of the deed.

Whether representing the buyer or seller, the transfer tax return must be reviewed. It is a sworn statement and as previously stated, if not correctly paid by the seller, the buyer will be liable.

*In the case where a return is used to file a "no consideration" deed, and the return is filed 60 days after the dated date, the City will impose a flat fee penalty of \$100.00. (11-2114B)