

FEDERAL STANDARD ABSTRACT

TITLE NEWS

Issue #70

August 2010

Title News

A Tax on Title Searches

The NYS Department of Taxation and Finance has issued a memorandum reinterpreting the sales and compensating use tax to apply it to the sale of title searches. In the view of the Department, a title search is a taxable information service under Tax Law §1105(c)(1). This new interpretation is not the result of a new statute, but merely a reinterpretation of statutory law. The Department cautions that this interpretation contradicts the existing policy of Department. All prior letters and memoranda issued by the Department on this point are to be considered revoked. As it overturns existing policy, past transactions will not be reviewed and the new policy shall apply as of September 1, 2010.

At the time of this writing there is significant uncertainty as to how the tax will apply. For example, the memo clarifies that sales of title records by a county clerk are not taxable and sales of reports to purchasers or their attorneys are taxable. If the title company hires an individual to retrieve title records from a county, would that service be taxable, too? Probably not, because re-sales are generally exempt from sales tax. But the most important question is this: In Downstate NY there is no separate charge for title searches. Where a client purchases title insurance, it is generally illegal for a title company to bill

separately for title searches. As per the TIRSA Rate Manual, the insurance rate includes the cost of searching title. Hence, in Downstate NY there is typically no separate charge for searching title, unless the transaction fails and the client does not purchase title insurance and pays only for the search. What does this mean for the purposes of the sales tax? Clearly, there is no tax on title insurance. Will only cancelled transactions be taxable? Would it be legal for the Department to require title companies to collect sales tax only on a portion of the title insurance premium? At this point, it is all too early to say.

Lastly, we note that if title searches are taxable, it is likely that other information retrieval services provided by title companies may also become taxable; for example, running municipal, bankruptcy and patriot searches. The tax memorandum, TSB-M-10(7)S, dated July 19, 2010, can be found at the following address:

http://www.tax.state.ny.us/pdf/memos/sales/m10_7s.pdf.

A Sewer Charge on Parking Lots

NYC's proposed water rates for 2011 include a new sewer charge to be levied on parking lots. Until now, sewer charges have always been measured indirectly: by calculating how much water was supplied to a property, NYC calculates a sewer rent

charge. Typically, parking lots (unlike developed garages) have no water service. Hence, they have not been billed for sewer rents because no water has been supplied to them. The City argues that they owe a charge for the precipitation water runoff that they discharge into the sewers. The City estimates that the charge will be an average of \$725 per year per parking lot. The press release can be found [here: http://www.nyc.gov/html/dep/html/press_releases/10-33pr.shtml](http://www.nyc.gov/html/dep/html/press_releases/10-33pr.shtml).

Legalizing Residential Loft Apartments

The NY Legislature has passed a new law to protect residential tenants in illegally converted warehouse buildings. The law is substantially an expansion of the existing Loft Law. It covers residential tenants in warehouse buildings in parts of Brooklyn and Queens -such as Williamsburg, Greenpoint, Bushwick and Long Island City-, provided they were in

occupancy between January 1, 2008 and December 31, 2009. The current Loft Law only covered parts of Manhattan which had been in residential occupancy between April 1, 1980 and December 1, 1981. Among other effects, covered tenants are protected from eviction for illegal occupancy, and landlords are required to make repairs and improvements. For more information visit: <http://www.nytimes.com/2010/07/26/nyregion/26loft.html>.

Illegal Apartment Subdivisions under Attack

The NYC Dept. of Buildings has launched a campaign against the illegal conversion of apartments; i.e. the adding of internal subdivision walls that would make, for e.g., a two-bedroom out of a one bedroom. For more information visit: http://www.nyc.gov/html/dob/html/news/Illegal_Coversions.shtml.

DISCLAIMERS

These materials have been prepared by Federal Standard Abstract for informational purposes only and should not be considered professional or legal advice. Readers should not act upon this information without seeking independent professional or legal counsel.

The information provided in this newsletter is obtained from sources which Federal Standard Abstract believes to be reliable. However, Federal Standard Abstract has not independently verified or otherwise investigated all such information. Federal Standard Abstract does not guarantee the accuracy or completeness of any such information and is not responsible for any errors or omissions in this newsletter.

While we try to update our readers on the news contained in this newsletter, we do not intend any information in this newsletter to be treated or considered as the most current expression of the law on any given point, and certain legal positions expressed in this newsletter may be, by passage of time or otherwise, superseded or incorrect.

Furthermore, Federal Standard Abstract does not warrant the accuracy or completeness of any references to any third party information nor does such reference constitute an endorsement or recommendation of such third party's products, services or informational content.