

FEDERAL STANDARD ABSTRACT

TITLE NEWS

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Title News

A Tax on Title Reports

As announced in our last issue, the NYS Department of Taxation and Finance issued a memorandum indicating that title searches will, as of September 1, 2010, be taxable, under the sales and use tax, as sales of information. A formal release with guidance for the real estate industry will be issued by the Department. In the interim, the Department has provided informal answers to questions posed by the title industry, which we summarize below to the extent relevant to our clients.

The taxable event -i.e. the event triggering the tax- is the delivery of information after September 1, 2010, regardless of when the title order may have been placed. Title insurance premiums, and any searches necessary for the issuance of title policies (e.g. title searches and owner name searches), are not taxable. Any searches specially requested (e.g. name searches on additional parties) or customarily provided (e.g. municipal searches), are taxable, if they are not required for the issuance of the title policy. To be more specific, a title invoice in downstate New York typically contains the following items: (a) title premium and endorsements, (b) municipal searches and other searches specifically requested, (c) survey fees (new or inspection), and (d) recording fees and taxes, and (e) escrows, courier and service fees. In this list only (b) would be taxable. Real property tax

searches, as they are necessary for title insurance, are not taxable.

All miscellaneous searches provided by title companies, which are not a requisite of title insurance, are taxable. Coop lien searches, retrievals of recorded documents (whether certified copies or not), name searches for parties other than owners or mortgagors, zoning lot certificates, foreclosure and attorney searches, and State UCC searches, for example, are all taxable information services. The applicable tax rate is the one for the closing location. By way of example, the sales tax for New York City (i.e. all five boroughs) is 8.875%.

Lastly, we close with a word of caution for our clients. The tax is levied on any party who sells information by retrieving records. An attorney who retrieves records to submit to her clients may also be subject to the tax -assuming she charges for retrieving the records-, even if she obtained the records for free (e.g. by printing information from ACRIS or the Dept. of Building's Building Information System). The Department appears to recognize an exemption for legal work. See Tax Memorandum dated July 19, 2010, TSB-10-(7)S. Hence, retrieving information to draft a legal opinion for a client would not render the legal opinion taxable, even if it includes portions of the records retrieved. Our attorney clients are cautioned that the line is not clearly

drawn. A simple act such as retrieving a record free off the internet, submitting it to a client and then billing that client for the time spent in retrieving the record could be a taxable event. Whether the Department takes this position and pursues it, only time will tell.

New Power of Attorney Law

On September 1, 2009, a new law concerning powers of attorneys (“POAs”) came into effect, which became widely criticized by members of the bar at large. Almost a year later, on August 13, 2010, a new statute was passed to correct some of the criticism, two of which are relevant to our industry. First, the making of a POA no longer implies the revocation of prior POAs, as the 2009 statute had deemed. Second, the 2009 POA law, as amended, will no longer apply to a specific list of POAs. For example, the following POAs will not be covered by the 2009 statute: POAs given to condominium associations,

POA forms created by governmental agencies (e.g. IRS), proxy delegations of corporate voting rights, or a POA given in a partnership or similar agreement. Notably, there is an exception for POAs made to dispose or transfer assets (even real property) for business or commercial purposes.

The new statutory Short Form Power of Attorney (“POA”) (and Statutory Gift Rider) will be effective on September 12, 2010. New POA can be downloaded from our website: www.federalstandardabstract.com. All in all, it would seem that POAs made by individuals to sell or mortgage their homes will still be subject to the 2009 POA law, but POAs made for commercial transactions will be allowed in any form. But if the POA is a general one and made by an individual, then it is subject to the 2009 statute, even if used in connection with a commercial transaction.

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