

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York New York City Charter and section 11-2112 of the Administrative Code of the City of New York, I hereby promulgate the within amendments to the Rules Relating to the new York City Real Property Transfer Tax.

/S/ Martha E. Stark
Commissioner of Finance

Section 1. Paragraph 9 of subdivision (j) of section 23-03 of Title 19 of the Compilation of the Rules of the City of New York is deleted as follows:

[(9) A conveyance of premises owned by a foreign diplomatic mission or consular post, and used for diplomatic or consular purposes, including premises used as the residence for diplomatic or consular personnel.]

§2. Subdivision (a) of section 23-05 of such Rules is amended to add two new paragraphs (3) and (4) to such subdivision to read as follows:

(3) A foreign government, a person acting on behalf of a foreign government, or the head of a foreign government's diplomatic mission, with respect to premises used exclusively for diplomatic or consular purposes, or as the residence of the head of the diplomatic mission or consular post, to the extent exempt from the payment of tax pursuant to the Vienna Convention on Consular Relations (21 UST 77; TIAS 6820) or the Vienna Convention on Diplomatic Relations (23 UST 3227; TIAS 7502.)

(4) A foreign government or a person acting on behalf of a foreign government to the extent exempt from the payment of tax pursuant to a treaty or convention to which the United States and the foreign government are parties, other than as provided under paragraph (3), above.

§3. Paragraph 3 of subdivision (b) of section 23-05 of such Rules is amended to read as follows:

(3) A deed, instrument, or transaction conveying or transferring real property or an economic interest therein to any governmental body or person exempt from payment of the tax pursuant to [§23-05(a)] paragraph (1) or (2) of subdivision (a) of §23-05.

§4. These amendments shall apply to transfers and transactions occurring on or after the thirtieth day after publication of these amendments in the City Record.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules relating to the New York City Real Property Transfer Tax ("RPTT") that excludes conveyances of premises (including transfers of economic interests therein) owned by foreign diplomatic missions or foreign consular posts and used for diplomatic or consular purposes. The application of City taxes, including the RPTT, may be affected by treaties or conventions to which the United States is a party, such as the Vienna Convention on Consular Relations (21 UST 77; TIAS 6820) and the Vienna Convention on Diplomatic Relations (23 UST 3227; TIAS 7502). The proposed amendments are intended to inform and guide taxpayers concerning possible RPTT exemptions required by the above-referenced Vienna Conventions or any other international treaty or convention.

Specifically, these amendments eliminate the current exclusion in section 23-03(j)(9) of the Rules. Instead, foreign governments, persons acting on the behalf of foreign governments and the heads of foreign governments' diplomatic missions are included as persons exempt from the RPTT under subdivision (a) of section 23-05 of the Rules, but only to the extent that such a government or person is exempt under one of the Vienna Conventions. Under the amendments, for the exemption to apply, the real property, or economic interest therein, conveyed or transferred must be used exclusively for diplomatic or consular purposes, or as the residence of the head of the diplomatic mission or consular post. This language is similar to the current Rules, but is designed to more closely reflect language in the Vienna Conventions. Moreover, unlike the current Rules, if a foreign government, or a person acting on its behalf, or the head of a diplomatic mission is exempt from the RPTT, the amendments subject the grantee to the tax, unless the grantee also is exempt from the tax. Finally, the amendments provide for an exemption if any treaty or convention to which the United States and a foreign government are parties otherwise exempts the foreign government, or a person acting on its behalf, from the tax.