

MEMORANDUM

To: County Clerks/Recording Officers
United States Bankruptcy Trustees
Attorneys and Title Officers

From: Robert K. Thompson, Director
Division of Taxation

Subject: Gross Income Tax Withholdings on Real Estate
Bankruptcy Trustee Sales
Chapter 55, Laws of 2004

Date: October 13, 2004

P.L. 2004, C. 55, requires that on or after August 1, 2004, nonresident individuals, estates or trusts that sell or transfer real property in New Jersey make an estimated gross income tax payment on the gain from a transfer/sale of real property as a condition of the recording of the deed.

With regard to bankruptcy trustees' sales, the Division has requested an opinion from the Office of the Attorney General, as to whether such sales are covered by Chapter 55. In the meantime, and so as not to hold up the recording of deeds for such sales, the Division takes the position that such involuntary sales are akin to sheriffs' sales and not within the contemplation or intent of the Legislature when it passed Chapter 55. Just as in a sheriff's sale, the trustee is standing in the shoes of a creditor as the result of the institution of the bankruptcy action.

Accordingly, pending a contrary opinion from the Attorney General, no estimated income tax payment is required as a condition for the recording of bankruptcy trustee deeds. Please continue this procedure until and unless you are notified otherwise.

Questions on Chapter 55 and the new Gross Income Tax estimated payment requirements should be directed to Division of Taxation, Customer Service Center (609) 292-6400.

RKT/MJR:pc