

CLIENT ADVISORY

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POSTAL SERVICE ADOPTS NEW STANDARDS FOR MULTIPLE MAILBOXES

The current requirements for mail receptacles in apartment and commercial buildings were adopted in 1975. The United States Postal Service has found, however, that its customers and operations have changed considerably since then, with the average customer receiving more (and often larger) pieces on a daily basis and theft from wall-mounted mailboxes becoming more common. In September 2004, the Postal Service adopted a new standard, **USPC Standard 4C, *Wall-Mounted Centralized Mail Receptacles*, 39 C.F.R. Part 111, 69 Fed. Reg. 171 (Sept. 3, 2004)**, intended to accommodate the needs of modern mail and to improve security.

The requirements of Standard 4C fill almost 30 pages of technical specifications and schematic drawings. However, some of the notable features of the new scheme are (1) mailboxes approximately 20% larger than those required under the preceding rules (at least 3" high x 12" wide x 15" deep), (2) one parcel locker (i.e., a large receptacle for packages that will not fit in the individual mailboxes) for every ten units, and (3) improved lock mechanisms, both for the customer and the mail carrier.

The new standard applies to all residential and commercial properties with four or more units that (a) use clustered multiple mailboxes and (b) have common, rather than individual, entrances. However, only new structures and existing structures undergoing substantial renovation will be required to install receptacles meeting the new requirements. "Substantial renovation" means "structural alterations in the mailbox area that create the opportunity to accommodate wall-mounted receptacles" meeting the new standards; it does not include routine or intermittent maintenance, painting, replacement, repair or upgrade of carpets, furniture or floors or even "replacement or repair of mail receptacles" unless part of a larger renovation project.

Compliance with the new rules will not become mandatory until two years after the new standard's publication (i.e., September 3, 2006). In the case of construction occurring before then, the Postal Service will encourage, but not require, compliance with the new rules. Postmasters may grant exceptions from all or parts of the new rules, as in cases, for example, where compliance would cause violation of building codes or other laws, safety hazards or unreasonable financial hardship.

During the public comment period before the new standard was adopted, concern was expressed at the significant increase in the cost of compliance to both building owners and

manufacturers of the mailboxes. The Postal Service predicts, however, that the new rules will reduce maintenance and personnel costs incurred by buildings and result in less cluttered lobbies. It also believes that the new rules will improve access to the mailboxes by carriers and (because of the parcel lockers) would avoid the return of bulky or voluminous mail to the Post Office, thus reducing Postal Service costs. In response to the complaint that residents would bear the ultimate burden of the increased costs, the Postal Service takes the position that such a result is fairer than imposing the cost of the modifications (or the continuing costs of mail inefficiency) on the Postal Service, which would pass it on through higher postal rates to all its customers, including those who do not live in multiple dwellings.

ESTIMATED TAX PAYMENT DUE FOR NONRESIDENTS ON SALE OF CO-OP

Many tenant-shareholders of New York cooperative apartments are residents of other states. Recent changes in New York's tax laws have added to the obligations of such nonresidents on the sale of their shares.

Since September 2003, **New York Tax Law, § 663**, has required the nonresident seller of real property (including a condominium) to pay the estimated tax on the capital gain derived from the sale before the deed is recorded, unless one of certain specified exemptions applies. In September 2004, this section was amended to refer to cooperative units as well. Effective November 18, 2004, the nonresident seller of shares of a residential cooperative, unless exempt, must pay his estimated income tax liability on any gain within fifteen days after the closing.

The nonresident taxpayer may claim exemption from this requirement (a) if the cooperative unit was his or her "principal residence" within the meaning of **Internal Revenue Code, § 121** (which is not as contradictory as it looks, since he may be a nonresident at the time of the sale but still have held the apartment as his principal residence for two out of the last five years, as required by the Internal Revenue Code); or (b) if he or she is a mortgagor transferring to a mortgagee; or (c) if the transferee is a governmental agency or authority or a private mortgage insurance company. If the shareholder does not qualify for such an exemption, he or she must promptly file the new **Form IT-2664**, report the gain or loss and make the estimated tax payment on any gain.

Even if the nonresident seller is exempt from this immediate estimated tax payment, however, either because he falls within one of the exemptions listed above or because he transferred his shares before November 18, 2004, he should consider adjusting his next regularly scheduled estimated tax payments to account for any gain on the sale. **New York Tax Law, § 631(b)(1)(E)**, explicitly deems the gain on the sale of a New York cooperative unit after January 1, 2004, to be New York source income to a nonresident taxpayer.