



STATE OF NEW YORK

DEPARTMENT OF LAW

REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

**Re: Disclosure Requirements Regarding
The Tax Cuts and Jobs Act of 2017**

Date: January 9, 2018

The New York State Department of Law (“DOL”) publishes this memorandum as a guidance document pursuant to State Administrative Procedure Act § 102(14).

Introduction

On January 1, 2018, the Tax Cuts and Jobs Act of 2017 went into effect. This federal law significantly changes the previously existing Internal Revenue Code, including the taxes and deductions related to homeownership. This guidance document clarifies how such changes to federal tax law affect DOL disclosure requirements for sponsors of cooperative interests in realty.

Further information regarding the Tax Cuts and Jobs Act of 2017 is available at the following web address:

<http://docs.house.gov/billsthisweek/20171218/CRPT-115HRPT-466.pdf>

DOL Disclosure Requirements

Due to the aforementioned changes to federal tax law, many offering plans now contain inaccurate tax information and projections. In particular, tax information and projections based on the previously existing Internal Revenue Code will be out of date. To provide potential purchasers with current and accurate information regarding the tax implications of their purchase, the DOL will require the following updated disclosures in offering plans and amendments.

1. Sponsors of offering plans submitted to the DOL after the date of this guidance document must include in their offering plan tax information and projections based on new federal tax law, including, but not limited to, the opinion(s) of counsel and/or other experts and all other tax information and projections included in the offering plan as applicable.

2. Sponsors of offering plans that the DOL has accepted for submission but not yet accepted for filing as of the date of this guidance document must revise their pending offering plan to include updated tax information and projections based on new federal tax law. Such revisions include, but are not limited to, the opinion(s) of counsel and/or other experts and all other tax information and projections included in the offering plan as applicable.
3. Sponsors of offering plans that the DOL has already accepted for filing as of the date of this guidance document are **not** required to amend their offering plan to include updated tax information and projections based on new federal tax law (although the DOL highly encourages them to do so). If the sponsor of such an offering plan chooses not to amend the offering plan to include updated tax information and projections, the next substantive amendment¹ to the offering plan submitted to the DOL after the date of the guidance document must include the following disclosure as a special risk:

“On January 1, 2018, the Tax Cuts and Jobs Act of 2017 went into effect. This federal law significantly changed the previously existing Internal Revenue Code, including the taxes and deductions related to homeownership. Accordingly, the tax information and projections disclosed in this offering plan may be inaccurate because such are based on federal tax law as it existed prior to 2018. Purchasers are advised to consult with a tax expert regarding whether the new law will affect the purchaser’s taxes. Purchasers should not rely on any representations in this offering plan addressing taxes without first consulting a tax expert.”

Please note that sponsors of amendments that the DOL has accepted for submission but not yet accepted for filing as of the date of this guidance document do not need to include the aforementioned disclosure in their pending amendment. However, the next subsequent substantive amendment to the offering plan submitted to the DOL after the date of this guidance document must include such disclosure as a special risk.

The DOL reserves the right to reject for filing offering plans and amendments that do not include the information and disclosures described herein. Additionally, the DOL reserves the right to update its disclosure requirements on this topic in the future. However, it shall be sponsor’s obligation to submit updated tax information, projections, and/or disclosures if there is a change to federal tax law in the future, regardless of whether the DOL updates its disclosure requirements.

¹ For the purposes of this guidance document, “substantive amendment” shall refer to all amendments submitted to the DOL that are not solely limited to price changes.