

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-96 (4) R
Real Property Transfer
Gains Tax
August 21, 1996

Detailed Information on the Repeal of the Real Property
Transfer Gains Tax (Article 31-B of the Tax Law)

On July 13, 1996, the Real Property Transfer Gains Tax (the "gains tax") was repealed. The repeal of the gains tax applies to transfers of real property that occurred or occur on or after June 15, 1996. The repeal is contained in sections 171 through 180 of Chapter 309 of the Laws of 1996.

This memorandum specifically addresses the pertinent gains tax repeal provisions of Chapter 309 in the order of their significance.

a) **Section 171** of Chapter 309 repeals the gains tax applicable to transfers of real property occurring on or after June 15, 1996. You may apply for a refund of any gains tax paid with respect to any transfers of real property that occurred on or after June 15, 1996. Use Form TP-165.8 to apply for your refund.

b) **Section 180** of Chapter 309 provides for the continuation of the provisions of the gains tax after June 14, 1996 as they relate to transfers that occurred on or prior to that date (the "continuation provisions"). The continuation provisions provide, in part, as follows:

"...with respect to the assessment, payment or payment over, determination, collection and refund of tax imposed by article 31-B of the tax law, the filing of forms and returns and the preservation of records for the purpose of the tax imposed by such article 31-B, the civil and criminal penalties applicable to the violation of the provisions of such article, the secrecy of returns, and disposition of revenues, shall continue in effect with regard to all such taxes incurred, including any penalty and interest related thereto, and transfers occurring prior to [June 15, 1996] "

Under these continuation provisions, any gains tax already determined to be due continues to be owed. For example, tax that was being paid under an existing installment plan must continue to be paid and contingent consideration with respect to transfers which occurred prior to June 15, 1996 must continue to be reported, and any tax related thereto must be paid. Audit activity on transfers that occurred prior to June 15, 1996 may continue. Also, taxpayers may continue to claim refunds within the prescribed statute of limitations for taxes paid in relation to transfers that occurred prior to June 15, 1996.

Section 180 of Chapter 309 also contains special rules regarding the final computation of tax in the case of partial or successive transfers which are treated in the aggregate pursuant to former Section 1440.7 of the Tax Law (the "close-out provisions"), including transfers pursuant to a condominium or cooperative plan.

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The close-out provisions require that a transferor file a final computation of tax (a "final computation") in the case of partial or successive transfers (1) which were treated in the aggregate for purposes of the gains tax \$1 million threshold, pursuant to former Section 1440.7 of the Tax Law and (2) where a unit, share, parcel or interest pursuant to the plan or aggregated transfer remained unsold on June 15, 1996. The final computation must be filed with the Tax Department by May 31, 1997. Partial or successive transfers of subdivided parcels and transfers pursuant to condominium and cooperative plans are examples of transfers that are covered by these close-out provisions.

In the final computation, the determination of the final gain or loss from these transfers is to be based on the actual units, shares, parcels or interests in real property transferred after March 28, 1983 (exclusive of grandfathered transfers) but prior to June 15, 1996.

The actual consideration received from the transfer of all units, shares, parcels or interests that occurred prior to June 15, 1996 must be computed taking into account the actual brokerage fees paid or required to be paid with respect to these transfers. From this amount, the actual original purchase price directly attributable to those units, shares, parcels or interests plus a reasonable apportionment of the amount of actual original purchase price indirectly attributable to those units, shares, parcels or interests must be subtracted to determine the actual gain or loss from the partial or successive transfers that occurred prior to June 15, 1996. A determination of what constitutes a reasonable apportionment of the amount of actual original purchase price attributable to units, shares, parcels or interests will vary depending on the facts and circumstances of each case.

Taxpayers must use the following forms to file their final computation:

- DTF-1001 (Real Property Transfer Gains Tax Final Computation)
- DTF-1000 (Real Property Transfer Gains Tax Schedule of Original Purchase Price for the Final Computation) and
- DTF-1004 (Real Property Transfer Gains Tax-Schedule of Units, Shares or Parcels Transferred Before June 15, 1996).

The instructions for the forms to be used for the final computation are DTF- 1000-I and DTF- 1001 -I.

Information regarding how to order these forms and instructions is given at the end of this memorandum.

If Final Computation Results in an Overpayment of Tax

If the final computation results in an overpayment of tax, the final computation filing will be treated as an application for a refund. However, Chapter 309 provides that no interest will accrue on any overpayment of tax which is credited or refunded prior to the ninety-first day following the filing of the final computation. Final computation filings filed prior to May 31, 1997 are considered to be filed on May 31, 1997. Therefore, no interest will accrue with respect to an overpayment determined as a result of any such filing if the overpayment is credited or refunded on or before August 29, 1997. Interest will accrue on an overpayment resulting from the filing for the preceding two year period if the Department fails to issue the refund by August 29, 1997.

If the Final Computation Results in an Underpayment of Tax

General

If the final computation results in an underpayment of tax, the tax due must be paid on or before May 31, 1997. The provisions of Article 31-B pertaining to underpayments, including the assessment and collection provisions of Section 1444 of the Tax Law and the interest and penalties provisions of Section 1446 of the Tax Law, shall apply with respect to the underpayment. There are special rules for transfers pursuant to condominium or cooperative plans. For these transfers, when the transferor has elected to pay the tax for such transfers under the Tax Department's Safe Harbor Rules (see TSB-M-94(2)-R), interest and Penalties will not accrue as described in the preceding sentence with respect to any underpayment which results from the receipt of actual consideration from the transfer of shares or units in excess of the proper safe harbor estimate of consideration. However, penalties and interest penalties may accrue and interest will accrue for an underpayment of tax resulting from the understatement of any other component of consideration or overstatement of deductions (e.g., contributions to a working capital fund or reserve fund) or overstatement of original purchase price.

Installment Payments

If the final computation results in an underpayment of tax exceeding \$10,000, the taxpayer, without seeking permission from the Tax Department, may elect to pay the underpayment plus the statutorily mandated interest in three equal installments. The Tax Department will compute the amount of appropriate interest due on each installment payment. The first installment must be paid on or before May 31, 1997, the second installment must be paid on or before May 31, 1998 and the third installment must be paid on or before May 31, 1999. However, in order for the taxpayer to validly make this election, without seeking the permission of the Tax Department, the taxpayer's final computation must be filed and the first installment paid by May 31, 1997. If the Tax Department determines that tax is due in addition to that shown to be due by the taxpayer in the final computation, a taxpayer making the election

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to pay the tax in installments may pay the additional tax with any applicable interest at the same time as any of the remaining installments are paid. In this case, any such additional tax determined to be due by the Tax Department may be paid in equal annual installments based on the number of installment payments that remain to be paid at the time that the additional tax is determined.

Example: A taxpayer makes a final computation filing on October 1, 1996, showing an underpayment of tax of \$12,000. The taxpayer elects to pay the tax in installments and makes the first \$4000 payment on May 31, 1997. On June 24, 1997, the Tax Department determines that an additional \$2,000 of tax is due. The additional tax due of \$2000 may be paid in equal annual installments including accrued interest with the taxpayer's final two installment payments which are due on May 31, 1998 and May 31, 1999. Therefore, the taxpayer's remaining final two installment payments due will be \$5000 each, plus accrued interest.

Statute of Limitations

Underpayments

No assessment of additional tax shall be made after the expiration of three years from the later of May 31, 1997 or the date the final computation of tax is filed.

Overpayments

An application for refund must be made on or before May 31, 1999 for any transfers where a final computation is required. In all other cases, an application for refund must be made within 2 years from the date of transfer. Refund applications for transfers that do not require a final computation filing must be made on Form TP-165.8.

General

Final computations of tax made prior to May 31, 1997 shall be considered to be filed on May 31, 1997. A final computation of tax filing will not be considered to be filed until it is in processible form. A final computation filing is considered to be in processible form when (1) it is filed on the proper forms, (2) it contains the names, addresses, identification numbers and signatures of the transferor or transferors, (3) all schedules related to the final computation are complete, and (4) sufficient information is included to permit the mathematical verification of the tax liability shown.

C) **Section 179** of Chapter 309 repealed Section 1354(4) of the Real Property Actions and Proceedings Law. This section required the referee in a mortgage foreclosure sale to pay any gains tax owed by the defaulting mortgagor from the proceeds of the foreclosure sale.

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d) **Section 178** of Chapter 309 repealed Section 333(l-f) of the Real Property Law which provided that a recording officer shall not record any conveyance of real property unless the gains tax filing requirements of Section 1447. l(f) were satisfied.

You may order forms, instructions or publications by calling, within New York State, 1-800-462-8100. If you order these forms and instructions from outside of New York State please call 518-438-1073. Also, forms, instructions or publications may be ordered through the Tax Department's new fax-on-demand system. The system provides callers with a toll-free number for ordering documents on the Fax-on-Demand system. The system is available 24 hours a day, seven days a week. The toll free number for the system is 1-800-748-FORM (3676). For information, you can also call toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581. Telephone assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday.