

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-15(1)R
Real Estate Transfer Tax
March 12, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M131220B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether Form TP-584 (Real Estate Transfer Tax Return), and specifically Schedule B, must be completed and filed to be able to record an affidavit attesting to the performance of an act necessary to extend the term of an oil and gas lease (which lease was previously recorded). Petitioner is the lessee.

We conclude that Form TP-584, and specifically Schedule B, must be completed and filed in this instance.

Facts

Petitioner is the lessee of oil and gas rights to real property. The lease in question includes a “primary term,” during which the lease remains effective and the lessee has the right to commence development activities involving the property covered by the lease. The lease is filed with the applicable county clerk to provide notice to all of the existence of the lease.

Petitioner further notes that such leases often include a provision that allows the lessee, at its option, to extend the primary term of the lease for an additional fixed period by making a specified payment to the lessor. A Lessee who extends the primary term of the lease pursuant to this provision wants to provide notice of the extension so that no one can lease the oil and gas rights to the property in question during the extended term. Accordingly, a lessee will seek to record an affidavit attesting to the payment of the additional sum and extension of the primary term of the applicable lease.

Analysis

Under Tax Law § 1402(a), a tax is imposed on each conveyance of real property or interest therein when consideration exceeds \$500. A “[c]onveyance’ means the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property” Tax Law § 1401(f) provides that an interest in real property includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents,

profits, or other income derived from real property. An oil and gas lease is a type of development right and so constitutes an interest in real property.

The extension of an oil and gas lease beyond its initial term is also an additional conveyance of the development rights, i.e., of an interest in real property.

The instructions to Form TP-584 state “Form TP-584 (which contains in Schedule B the real estate transfer tax return) must be filed for each conveyance of real property from a grantor to a grantee/transferee.” The creation of a gas or oil lease, or an extension thereof, which is a conveyance of an interest in real property, requires the filing of Form TP-584, regardless of whether or not consideration is reported. See TSB-M-97(1)R.

Thus, to record an affidavit attesting to the payment of an additional sum and extension of the primary term of an oil and gas lease (which lease was previously recorded), Schedule B of Form TP-584 must be completed and filed with the county clerk. The form must be signed by the grantor and the grantee (i.e., the lessor and lessee, respectively, in this instance). In addition, the real estate transfer tax due on the consideration for the extension must be paid. Tax Law 1404(a) provides that “the real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed by this article at the time required . . . the grantee shall have the duty to pay the tax.” If Petitioner’s lessor does not pay the tax, Petitioner must do so.

DATED: March 12, 2015

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.