

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

TSB-A-96 (14) R
Real Estate
Transfer Tax
October 24, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M960715A

On July 15, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Mitchel Engel, c/o Neil Garfinkel, Esq., 370 Lexington Ave., Suite 802, New York, N.Y., 10017.

The issue raised by Petitioner, Mitchel H. Engel, is whether the additional real estate transfer tax (the "additional tax") is imposed upon the conveyance of vacant land coupled with the execution of a contract to construct a home on the same land (the "building contract").

Petitioner submits the following facts as the basis for this Advisory Opinion. On May 18, 1996, Petitioner and Thomas Wright Development Corp. ("Thomas Wright") entered into a contract for the sale of vacant land ("Land Contract"). The contract price of the land was \$550,000. On the same day, Petitioner and Thomas Wright entered into a contract for the construction of a home on the land that was the subject of the land contract. The contract price for the construction of the home is \$1,000,000. Petitioner and Thomas Wright both expressly agreed "the Land Contract and the Building Contract shall be deemed to be separate and divisible agreements." Petitioner states that the Land Contract and the Building Contract did not contain cross-default provisions. Also, the Land Contract does not provide for the reversion of the land in the event of a default under the Building Contract. The vacant land was conveyed to Petitioner on June 13, 1996.

Applicable Law

Section 1402-a(a) of Article 31 of the Tax Law imposes the additional tax on each conveyance of residential real property or interest therein when the consideration for the entire conveyance is \$1 million or more. Section 1402-a(a) sets forth that the phrase "residential real property" shall include any premises that is or may be used in whole or in part as a personal residence, and shall include a one, two, or three-family house, an individual condominium unit, or a cooperative apartment unit. The rate of the additional tax is one percent of the consideration or part thereof attributable to the residential real property.

Conclusion

Based on the facts of the Petition, the only conveyance that took place between Thomas Wright and Petitioner is the conveyance of the vacant land on June 13, 1996. Since the conveyance

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of unimproved land does not constitute the conveyance of residential real property in accordance with section 1402-a(a) of the Tax Law, such conveyance is not subject to the additional tax.

DATED: October 24, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.