

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

TSB-M-95 (5)R
Real Property Transfer
Gains Tax
Real Estate Transfer Tax
September 29, 1995

1995 Amendments to the Real Property
Transfer Gains Tax and the Real Estate Transfer Tax

On June 7, 1995, Chapter 2 of the Laws of 1995 was enacted. Chapter 2 includes amendments to Article 31 of the Tax Law, the real estate transfer tax (the transfer tax), and to Article 31-B of the Tax Law, the tax on gains derived from certain real property transfers (the gains tax).

These amendments eliminate some transfer tax and gains tax filing requirements when certain public utility easements and licenses are recorded. Also, the amendments extend the period of time that a taxpayer may be eligible for the exemption provided at section 1443.8 of the Tax Law, commonly referred to as the "builder's exemption."

Filing Requirements (public utility easements and licenses)

Under prior law, a recording officer could accept for recording a conveyance of an easement or license to a public utility (as defined in section 186-a(2) of the Tax Law) if the consideration for the conveyance was two dollars or less without the submission of any of the following:

Form TP-582, *Tentative Assessment and Return*;

Form TP-584, *Combined Real Property Transfer Gains Tax Affidavit, Real Estate Transfer Tax Return, Credit Line Mortgage Certificate*; or

Form TP-584.2, *Combined Real Property Transfer Gains Tax Affidavit, Real Estate Transfer Tax Return for Public Utilities and Governmental Agencies*.

For more information on the filing requirements for gains tax and transfer tax applicable to a conveyance of an easement or license to a public utility under prior law, see TSB-M-92(3)-R.

This exception from the gains tax and transfer tax filing requirements now includes any conveyance of an easement or license to a public utility that is a provider of telecommunication services as defined in section 186-e. 1 of the Tax Law where the consideration for the conveyance is two dollars or less. Under the gains tax, public utilities are required by Tax Law section 1449-b.2 to pay the one dollar filing fee once the recording officer accepts for recording the previously described conveyances of an easement or license.

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The amendments affecting the filing requirements for the gains tax and transfer tax apply to transfers and conveyances occurring on or after January 1, 1995.

Expansion of eligibility for the "builder's exemption"

Sections 1440.5(i)(B)(I) and (II) of the gains tax were amended to extend the "builder's exemption" provided at section 1443.8 of the gains tax for an additional eighteen months. Under prior law, a taxpayer would be afforded the benefits of the "builder's exemption" by adding to original purchase price the amount of qualifying capital improvement costs incurred during the qualifying period to construct certain qualifying capital improvements on the real property. In order for the taxpayer to qualify for this exemption, the taxpayer would have had to begin construction of the capital improvement on or after January 1, 1994, and before January 1, 1996. The new amendments extend the construction commencement date from January 1, 1996, to June 30, 1997.

In addition, under prior law, if a taxpayer constructed a qualifying capital improvement, the taxpayer could add to original purchase price the total of the qualifying costs incurred between the time construction actually began and the earlier of December 31, 1997, or the date the qualifying capital improvement is ready to be placed in service. This period of time is referred to as the "qualifying period." The amendments extend the ending date of the qualifying period from December 31, 1997, to June 30, 1999.