



Department of Taxation and Finance

Important

The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.

For additional information concerning the repeal of the tax, see [TSB-M-96\(4\)R](#).

The TSB-M begins on page 2 below.

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

TSB-M-84 (3.1) -R
Real Property Transfer
Gains Tax
February 6, 1996

Real Property Transfer Gains Tax
Summary of 1984 Amendments

Because of Tax Law changes, TSB-M-84- (3) -R, issued August 22, 1984, is obsolete and is replaced by this memorandum.

This memorandum provides a brief summary of the various 1984 amendments and makes reference to subsequent statutory amendments.

I. Substantive Amendments

- A. The Tax Department was granted the authority to determine the costs that are allowed to reduce taxable gain under standards set by the statute. These costs include the cost of capital improvements, certain legal, architectural, and engineering fees related to the sale of the property, and certain condominium and cooperative conversion costs. In addition, the transferor is allowed to include in original purchase price the cost of capital improvements not yet made as of the date of transfer, but which are required to be made. **Note:** Law changes in 1993, 1994 and 1995 further amended the definition of original purchase price. See TSB-M-93(1)-R, TSB-M-94(3)-R, TSB-M-94(3.1)-R and TSB-M-95(5)-R for information concerning the 1993, 1994 and 1995 modifications to original purchase price.
- B. The system of collecting the gains tax due on a transfer pursuant to a mortgage foreclosure was changed. The officer conducting a mortgage foreclosure is required to file a gains tax form with the Tax Department and to pay the tax out of the proceeds remaining after the foreclosing mortgagee's claim is satisfied. The defaulting mortgagor remains personally liable for any unpaid tax; however, transferee liability is eliminated in such cases. See part II, *Clarifying Amendments*, item F for more information on transferee liability.

II. Clarifying Amendments

- A. The exemption for transfers where the consideration is less than \$1,000,000 was amended. This amendment clarified the computation of consideration for a transfer of an option, an assignment of a contract and an assignment of a lease for purposes of this exemption. **Note:** This exemption was further amended in 1989. See TSB-M-89(2)-R for additional information on the 1989 amendments.
- B. An exemption was added to exempt the granting of an option and the execution of a contract to sell real property if use or occupancy of the property is not transferred. In addition, the transfer of a contract or option to purchase is taxable whether or not use or occupancy is also transferred.
- C. The definition of original purchase price was amended to clarify the computation of original purchase price for leases, subleases and gifts.
- D. The aggregation rules for partial or successive transfers were amended to require aggregation for purposes of the \$1,000,000 exemption. However, if the transferor or transferors furnish a sworn statement to the Tax Department that the transfers were not pursuant to a plan or agreement to avoid the gains tax, aggregation may not be required. In addition, transfers of real property by transferors who are tenants-in-common, joint tenants or tenants by the entirety must be aggregated. **Note:** Law changes in 1994 further amended the aggregation rules for partial or successive transfers. See TSB-M-94(3)-R for additional information on the 1994 amendments.
- E. Rules were provided for the payment and refund of the gains tax with respect to transfers pursuant to cooperative or condominium conversion plans and other aggregated transfers. **Note:** Further amendments were made to the rules for the payment and refund of the gains tax in 1989 and 1990. See TSB-M-89(2)-R, TSB-M-89(2.1)-R and TSB-M-90(3)-R for additional information on the 1989 and 1990 amendments.

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- F. Transferee liability was established in certain instances when a notice of determination is issued. **Note:** Further amendments were made to the provisions related to transferee liability in 1992 and 1993. See TSB-M-92(2)-R, TSB-M-92(2.1)-R and TSB-M-93(1)-R for additional information on the 1992 and 1993 amendments.

III. Administrative Amendments

- A. The installment payment provisions were modified to prorate the payment of the tax based on payments of consideration received by the transferor during each year in which an installment payment of tax is made. In addition, the maximum pay-out period for a purchase money mortgage was extended from 10 years to 15 years. **Note:** Further amendments were made to the rules for installment payments in 1989 and 1990. See TSB-M-89(2)-R and TSB-M-90(30)-R for additional information on the 1989 and 1990 amendments.
- B. Payment of the tax due on a lease, sublease or option with use and occupancy is payable in installments over the lesser of the term of the lease, sublease or period of use and occupancy or 14 years. **Note:** Further amendments were made to the rules for installment payments in 1989. See TSB-M-89(2)-R for additional information on the 1989 amendments.
- C. A three-year statute of limitation for assessments was added. This provided a finality for tax matters for the transferor and transferee who complied with the gains tax pre-transfer audit filing requirements, as long as any questionnaire or affidavit filed did not contain willfully false or fraudulent information. **Note:** Further amendments were made to the provisions governing the statute of limitations in 1989. See TSB-M-89(2)-R for additional information on the 1989 amendments.
- D. The Tax Department was granted the authority to waive penalties in appropriate circumstances. **Note:** Law changes in 1993 revised the penalty and interest penalty

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provisions of the gains tax. See TSB-M-93 (1) -R for additional information on the 1993 amendments.

- E. The interest penalty was limited to 25% in the aggregate. **Note:** 1989 legislation added a provision for a minimum penalty of \$100 for each transfer of real property or partial or successive transfer of real property. See TSB-M-89 (2) -R for additional information on the 1989 amendment. See TSB-M-93(1)-R for information on the 1993 amendments to the penalty and interest penalty provisions for gains tax.
- F. The remedies found in sections 1444 and 1445 were made the exclusive remedies available to review a gains tax liability.
- G. The provisions regarding the recording officers' responsibilities for the gains tax were moved from the Real Property Law to the Tax Law. **Note:** Law changes in 1992 and 1995 further modified the provisions related to the recording officers' responsibilities to allow for the recording of conveyances of certain easements or licenses to public utilities without a tentative assessment or gains tax affidavit. See TSB-M-92(3)-R and TSB-M-95(5)-R for additional information on the 1992 and 1995 amendments.
- H. The Tax Department was granted the authority to define who could sign the required forms. **Note:** In 1994, the provisions for signing of returns and other documents were amended to add a reference to limited liability companies.
- I. The use of affidavits for recording transfers of real property was expanded to include new situations in which the affidavit could be executed.