



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The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.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

SUMMARY OF OPINION LETTERS WITH REGARD TO THE
REAL PROPERTY TRANSFER GAINS TAX

The Department of Taxation and Finance has issued several letter opinions on issues not specifically addressed in Publication 588 (November 1984) or in the Gains Tax Regulations, effective September 24, 1985.

The following are summaries of the issues resolved in the opinions issued from April 1985 through March 1986. For your easy reference, the summaries are listed by the specific topic and subject matter addressed and include the date the opinion was written.

ACTING IN CONCERT/Firm Commitment Underwriter Agreement
September 30, 1985

Underwriters acting as a vehicle to facilitate a public offering were not acting in concert to acquire a controlling interest by entering into a firm commitment underwriting agreement.

AFFIDAVIT/Collateral Assignment of Leases and Rents
February 20, 1986

Where the collateral assignment of leases and rents is being recorded with a sworn statement as provided for in § 255 of the Mortgage Tax Law, such sworn statement may be accepted by the recording officer in lieu of the Gains Tax Affidavit, Form TP-584.

AGGREGATION/Contiguous or Adjacent
August 7, 1985

Properties are considered contiguous or adjacent when the properties border each other, or they are in close proximity, and they are not completely separated by property owned by another party.

If properties are nearby and are separated only by a public street, highway, or walkway, the properties are considered adjacent, (i.e., building and parking lot across the street from each other).

AGGREGATION/Subdivided Property Improved with Residences August 27, 1985

In an arms'-length transaction involving other assets which are in addition to real property or an interest therein, the Department will generally accept the parties' allocation of the total consideration attributable to the real property or interest therein if such allocation is reasonable. The transferor and transferee, however, are required to demonstrate in their submission the method they used to arrive at their allocation and to determine that such allocation is reasonable.

LEASES/Surrender of a Lease
December 11, 1985

An amendment to a lease to shorten its term was not distinguishable from the surrender of a lease, but in fact affected a transfer similar to that of a surrender of a lease and accomplished the same result.

REFUND PROCEDURES/Protective Claim for Refund
February 11, 1986

Transferor could file a protective claim for refund within two years from either the date of transfer or the date of payment, whichever is later, where the transferor was involved in litigation with the transferee to settle a dispute over the payment of an additional brokerage fee.

RESIDENCE EXEMPTION/Mortgage Foreclosure
November 21, 1985

Exemption afforded to the transferor under § 1443.2 of the Tax Law applies to the mortgage foreclosure of the transferor's/ mortgagor's personal residence.

RESIDENCE EXEMPTION/Abutting Land Sold Without Residence
March 21, 1986

The land alone is not a residence. Thus, where part of the land is sold separately, the portion or portions sold without the dwelling will not qualify for the residential exemption found in 1443.2 of the Tax Law. The consideration received for all abutting land sold without the residence is required to be aggregated, if such properties are contiguous or adjacent to each other, either directly, or through other properties owned by the transferor.

A parcel is considered "improved with residence" only when the construction of the residence is completed. Thus, the transfer of title to a transferee before the residence's construction so that the residence may be custom built to transferee's specification is not considered a sale of a subdivided parcel "improved with residence"

AGGREGATION/Contiguous or Adjacent
March 21, 1986

The consideration received from the sale of two or more parcels of land, sold by one transferor to one or more transferees, is to be aggregated for purposes of the \$1 million exemption, if such properties are contiguous or adjacent to each other, either directly, or through other properties owned by the transferor.

BROKERAGE FEES/Brokerage Fees Paid to Partnership of which Owner of Property is a Partner
September 4, 1985

As long as the brokerage fees are reasonable in amount and nature, they are deductible when computing the total consideration for the purpose of determining gain, regardless of the fact that the owner of the real property is a partner of the partnership to which the brokerage fees are being paid.

CONTINGENT PAYMENT/A Contingent Future Payment is not Required to be added to any known Consideration as of the Date of Transfer April 22, 1985

Where a contract contains an unvalued benefit or provides for a contingent payment, the Department will issue either a statement of tentative assessment or statement of no tax due based on the known consideration. An agreement extending the statute of limitation of time for assessment will be required to be filed. If there is additional consideration received for the transfer at a later date, the transferor and transferee, are required to file updated questionnaires disclosing the actual consideration for the transfer of real property.

FAIR MARKET VALUE/Determining Consideration for Real Property January 29, 1986