



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The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.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-89 (2)R  
Real Property  
Transfer Gains Tax  
June 19, 1989

1989 Amendments to  
Real Property Transfer Gains Tax

Chapter 61 of the Laws of 1989 was enacted on April 19, 1989. Among other things, it amended Article 31-B of the Tax Law, Tax on Gains Derived From Certain Real Property Transfers (the "Gains Tax").

This memorandum provides a brief summary of the various Gains Tax amendments which, unless otherwise indicated, took effect on April 19, 1989.

- A. Subdivision (7) of section 1440 of the Tax Law is amended to include in the definition of "transfer of real property" the transfer of a controlling interest in an entity with an interest in real property. (Effective July 1, 1989.)

New subdivision (8) is added to section 1440 of the Tax Law to define the term "person" to mean an individual, corporation, partnership, association, trust, estate or other entity, or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee, or member is under a duty to perform an act required under this article.

New subdivision (9) is added to section 1440 of the Tax Law to define the term "person liable for the tax" to mean a person who is personally liable for the tax whether as a transferor or as a transferee pursuant to paragraph (a) of subdivision (3) of section 1447.

- B. Subdivision (a) of section 1442 of the Tax Law is amended to provide that the tax shall be paid by the person liable for the tax no later than the first business day after the date of transfer.

Subdivision (c) of section 1442 of the Tax Law is amended to provide that for the transferor to elect to pay the Gains Tax in installments, the Gains Tax due on a real property transfer must exceed \$10,000 in addition to the present requirement that the tax must exceed 50% of the cash portion of the consideration received by the transferor on or before the date of transfer. (Effective July 1, 1989.) Subdivision (c) is also amended to provide that, where the transferor receives 90% or more of the balance of the cash consideration prior to the anniversary date of the transfer, the balance of the tax due in installments shall be payable on the receipt of such consideration. (Effective May 19, 1989.)

Subdivision (d) of section 1442 of the Tax Law is amended to provide that the rules relating to installment payments in subdivision (c) of section 1442 of the Tax Law apply to the installment payments relating to leases, subleases and options. Therefore, in the case of the creation of a lease or sublease which is a transfer of real property, or the granting of an option with use and occupancy of real property, the transferor can elect to

pay the Gains Tax in the installments only in cases where the Gains Tax due exceeds \$10,000 and exceeds 50% of the cash portion of the consideration received by the transferor on or before the date of transfer.

(Please note that the newly revised Form TP-583, Supplemental Return, with print date 5/89, that has been recently made available by the Department, does not adequately reflect, at Part I of Schedule B, criteria that must be met in order to qualify to pay the tax in installments in the case of the creation of a taxable lease or sublease, or the granting of an option with use and occupancy. Accordingly, Form TP-583 will be revised. In the interim, when making the election to pay the tax in installments in the case of a lease or sublease or the granting of an option with use and occupancy, use Part II of Schedule B. Do not use Part I.)

New subdivision (f) is added to section 1442 of the Tax Law to provide that the payment of the Gains Tax shall be accompanied by a statement of tentative assessment and return or other form required by the Commissioner of Taxation and Finance. New subdivision (f) also provides that an election to pay on an installment basis must be indicated on a form prescribed by the Commissioner of Taxation and Finance (Form TP-583, Supplemental Return) which is attached to the tentative assessment and return. Such election must be filed on or before the date of transfer, whether or not any tax payment is due.

- C. Subdivision (1) of section 1443 of the Tax Law is amended to provide that for purposes of the \$1 million exemption only, consideration shall be deemed to also include:
- (a) in the case of a transfer or an acquisition of a controlling interest in an entity which owns an option to purchase real property, the amount to be paid for the real property pursuant to the option agreement being transferred;
  - (b) in the case of a transfer or an acquisition of a controlling interest in an entity which owns a contract to purchase real property, the amount required to be paid for the real property pursuant to the terms of the contract being transferred; and
  - (c) in the case of a transfer or an acquisition of a controlling interest in an entity which is a lessee of a lease, the value of the remaining rental payments required to be made pursuant to the terms of the lease.
- D. Subdivision (3), of section 1444 of the Tax Law is amended to add new paragraphs (a)(2), (b) and (c). Paragraph (a)(2) provides that, where the taxpayer files a petition with the Division of Tax Appeals, such division shall have the power to determine a greater amount of tax to be due and to determine if penalty or interest penalty should be assessed.

New paragraph (b) is added to provide that in the case of a transfer for which total consideration is not determinable by the Commissioner of Taxation and Finance at the time the questionnaires are submitted, the statute of limitations shall not expire until three

years from the date the taxpayer notifies the Commissioner of Taxation and Finance of the amount of consideration finally determined.

New paragraph (c) is added to provide that the statute of limitations for the assessment of tax may be extended where both the Commissioner of Taxation and Finance and the person liable for the tax have consented in writing to such extension.

- E. New section 1444-a of the Tax Law is added to clarify that the amount of tax shown on the tentative assessment and return, or a supplemental return filed with a tentative assessment and return, is deemed to be assessed on the date of transfer. It also provides that the Commissioner of Taxation and Finance must give notice, as soon as practicable, to each person liable for any amount of tax, penalty, interest penalty or interest, of the amount which has been assessed but remains unpaid and demand payment thereof.
- F. Section 1445 of the Tax Law is amended to provide that, where a transferor pays the tax in installments, an application for refund or redetermination of the tax due must be made within two years from the date of transfer.
- G. Subdivision (2) of section 1446 of the Tax Law is amended to provide that the minimum penalty for failure to file a tentative assessment and return or to pay the tax timely, for each transfer of real property or partial or successive transfer of real property, shall be \$100.

New subdivision (3) is added to section 1446 of the Tax Law to provide that interest shall accrue on any tax paid in installments, provided, however, that interest under this subdivision shall not apply to any tax due in installments on a transfer made pursuant to a binding written contract entered into on or before July 31, 1989. The interest shall be compounded daily and shall be two percentage points above the average prime rate as determined by the Commissioner of Taxation and Finance. (Effective July 1, 1989.)

- H. Subdivision (1) of section 1448 is amended to provide that when installment payments of consideration were structured to delay payment of the Gains Tax due, rather than for an adequate business purpose, the Commissioner of Taxation and Finance may declare such tax payable on or before the tenth day after such declaration. (Effective May 19, 1989.)
- I. Section 1449 is amended to change the reference to "transferor" to read "person" and the reference to "tax commission" to read "Commissioner of Taxation and Finance."