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The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.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



*Insert added on March 14, 2024*

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

TSB-M-89 (7)R
Real Property
Transfer Gains Tax
September 27, 1989

Taxability of Exchange of Shares Allocated to a Cooperative Unit and Cash for Shares Allocated to a Different Unit in the Same Cooperative

Taxpayers have asked for guidance concerning the application of the Real Property Transfer Gains Tax (the Gains Tax) when shares in a cooperative are transferred by a tenant shareholder, or an investor, to the sponsor of the cooperative housing corporation project, in exchange for shares of stock allocated to a different unit in the same cooperative.

Assume, for example, that the sponsor of a cooperative housing corporation sells shares of stock allocated to unit A to Mr. Jones, for a consideration of $60,000, and pays Gains Tax on the sale pursuant to the "safe harbor estimates" (see TSB-M-86-(3)R) filed with the Tax Department. Subsequently, Mr. Jones exchanges the shares allocated to unit A plus $20,000 in cash with the sponsor for the previously unsold shares allocated to unit B in the same cooperative. Unit B has a fair market value of $80,000.

As provided by section 1440.7 of the Tax Law, transfers pursuant to a cooperative plan include all transfers of stock in a cooperative corporation. For the purpose of imposing the tax on each unit, section 1442 states that the date of transfer shall be deemed to be the date on which each cooperative unit is transferred.

Section 1443(1) of the Tax Law provides in pertinent part that "... A total or partial exemption shall be allowed in the following cases: 1. If the consideration is less than one million dollars; ... 2. If the real property consists of premises occupied by the transferor as his residence (but only with respect to that portion of the premises actually occupied and used for such purposes).... "

Accordingly, when the sponsor and Mr. Jones each transfer cooperative stock, two transfers pursuant to a cooperative plan have occurred which are subject to the Gains Tax. If the consideration received on each such transfer is $1,000,000 or more, or if the transfer is required to be aggregated with other transfers and the total consideration received is $1,000,000 or more, the gains tax will be imposed on the gain derived from such transfers.

The sponsor will be required to add the consideration received for the shares allocated to unit B to all other consideration received under the cooperative plan, at the next required update of the project, to arrive at the new project totals to be used in computing the tax on future sales and computing the actual gain when the project is sold out. The sponsor will compute the tax due on the date of transfer, for the transfer of the shares allocated to unit B, using the current "safe harbor estimates" that are on file with the Tax Department.

If the sponsor later transfers shares allocated to unit A, the consideration received for such transfer is not required to be aggregated with the consideration received from other sales pursuant to the offering plan.

The consideration is only aggregated with the consideration received from other resales made by the sponsor to determine the $1 million threshold.

For purposes of computing the actual consideration received, each party is the transferor of the property that is given up, as well as the transferee of the property received in the exchange (see Gains Tax Regulation 590.60). While the above cited regulation deals specifically with Internal Revenue Code section 1031 exchanges, this position applies to all types of exchanges. Thus, the consideration received by the transferor is the net fair market value of the property received in the exchange (i.e. gross fair market value less the principal amount of any mortgage, lien or other encumbrance, whether assumed or taken subject to) plus the amount of the mortgage on the property given up in the exchange plus or minus any compensation received or paid in the transaction. Accordingly, the actual consideration received by the sponsor for shares allocated to unit B is equal to the fair market value of the shares allocated to unit A (the unit received) on the date of exchange, plus the $20,000 cash received in the exchange.

The consideration received by Mr. Jones on his transfer of the shares allocated to unit A will be equal to the fair market value of the shares allocated to unit B (the unit received) less the $20,000 cash paid to the sponsor.

Mr. Jones will be exempt from the Gains Tax on his transfer of cooperative shares because unit A was the only unit he owned and the consideration received for the transfer of shares allocated to unit A is less than $1 million.

Mr. Jones would also be exempt from Gains Tax on his transfer of cooperative shares if he used unit A exclusively as his residence, or if unit A was other than his residence and he owned other units and the aggregated consideration for the sale of the shares allocated to unit A and the other units is less than $1 million.