



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The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.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

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May 1, 1992

1992 Amendments to the Real Property
Transfer Gains Tax

On April 10, 1992, Chapter 55 of the Laws of 1992 was enacted. Included in Chapter 55 are amendments to Article 31-B of the Tax Law, Tax on Gains Derived from Certain Real Property Transfers (the "gains tax").

With respect to the amendments to the gains tax, Chapter 55 amends section 1446 of the Tax Law for the period from April 1, 1992 through February 28, 1993 only, to provide additional authority for the Commissioner of Taxation and Finance to remit, abate or waive all or a portion of the penalty and interest penalty imposed pursuant to section 1446.2(a) of Article 31-B of the Tax Law, by adding a definition of "reasonable cause." For this limited period, "reasonable cause" will include, but not be limited to (1) the existence of substantial authority for the tax treatment of any item by the person liable for the tax, or (2) in the absence of any published authority, written instruction or guidance issued by the Department of Taxation and Finance to the contrary, the disclosure of the tax treatment of an item in the pre-transfer audit procedure filing. Substantial authority includes (a) legal authority, other than mere reliance on professional advice or, (b) the application of generally accepted accounting principles to the reporting of the tax.

Specifically, Chapter 55 amends section 1446 of the Tax Law by adding new subdivision 5 to read as follows:

"5. For the period from April first, nineteen hundred ninety-two through February twenty-eight, nineteen hundred ninety-three:

(a) For the purposes of paragraph (a) of subdivision two of this section, "reasonable cause" includes, but is not limited to, (1) the existence of substantial authority for the tax treatment of any item by the person liable for the tax or (2) the disclosure of such treatment in the pre-transfer audit procedure filing in the absence of any published authority, written instruction or guidance issued by the department of taxation and finance to the contrary. "Substantial authority" shall include legal authority other than mere reliance on professional advice or the application of generally accepted

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accounting principles to the reporting of the tax imposed by this article. Notwithstanding such paragraph (a), the commissioner of taxation and finance may remit, abate, or waive a portion of the penalty and interest penalty imposed thereunder on a showing by the person liable for tax that there is reasonable cause for remittance, abatement or waiver of such portion.

(b) Where penalty and interest penalty have been determined under such paragraph (a) of such subdivision in relation to the failure to timely file a tentative assessment and return, the commissioner may remit, abate, or waive a portion of such penalty or interest penalty upon a determination that the person required to file has subsequently demonstrated a consistent pattern of timely filing in compliance with the provisions of this article."

The provisions of new subdivision 5 of section 1446 of the Tax Law are effective as of April 1, 1992 and shall apply to transfers of real property with respect to which:

- (a) tax and any accrued interest due is fully paid prior to March 1, 1993; and
- (b) penalty and interest penalty have not been finally and irrevocably fixed pursuant to section 1444 of the Tax Law prior to March 1, 1993, except as provided in (b) below.

Furthermore, the provisions of such new subdivision shall not apply if:

- (a) penalty or interest penalty was paid on or before April 1, 1992 or on or after March 1, 1993; or
- (b) a determination has been issued by the Division of Tax Appeals before March 1, 1993.

Also, notwithstanding section 1445 of the Tax Law, no refund will be allowed with respect to any tax or interest paid, where penalty and interest penalty have been remitted, abated or waived pursuant to newly added subdivision 5 of section 1446 of the Tax Law.