

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

TSB-A-96 (11) R
Real Estate
Transfer Tax
September 12, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.M960603A

On June 3, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Swiss Re America Holding Corporation, 237 Park Avenue, New York, New York, 10017. Petitioner submitted additional information pertaining to the Petition on June 12, 1996.

The issue raised by Petitioner, Swiss Re America Holding Corporation, is whether the conveyance of a certain 127-acre parcel of land that currently contains a large structure used for offices as well as five ancillary structures is subject to the Additional Real Estate Transfer Tax (the "additional transfer tax") imposed by Section 1402-a of Article 31 of the Tax Law.

Petitioner is contemplating purchasing, for commercial development, a 127-acre parcel of land located in the State of New York (the "Property"). The consideration for this conveyance will be in excess of \$1 million.

The Property currently contains a large structure of approximately 9,847 square feet which, while originally used as a one-family house, has been converted into office space (the "Main Building"). An architectural firm, whose lease began on June 15, 1986, and a law firm, whose lease began on January 1, 1995, are currently the exclusive occupants of the Main Building. It is contemplated that the Main Building will be demolished prior to the conveyance of the Property to the Petitioner.

In addition to the Main Building, the Property contains five smaller structures, which were originally built as ancillary structures to the Main Building (the "ancillary structures"). The fair market value of the ancillary structures is less than \$1 million, in the aggregate.

The first of the ancillary structures is a one-family house of approximately 874 square feet which has been leased since 1989, and which Petitioner intends to demolish immediately after the conveyance. The second structure of the ancillary structures is a one-family house of approximately 2,500 square feet which has been leased since 1986. The Petitioner intends to demolish this second structure after using it as an office while developing the Property. The third structure of the ancillary structures is a vacant one-family house of approximately 1,950 square feet. The fourth ancillary structure contains horse stables on the first floor and a loft of approximately 1,920 square feet on the second floor. This structure is currently used for storage. The fifth ancillary structure contains an apartment of approximately 2,137 square feet over a 5-car garage, and is occupied by the caretaker of the Property and his family. After the conveyance, the Petitioner intends to convert the third, fourth and fifth ancillary structures into a day care center.

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The development of the Property will be part of a New York State employee retention project, and as such, it is anticipated that all or a portion of the Property will be held by the Empire State Development Authority or other government agency, and leased back to the Petitioner.

Applicable Law

Section 1402-a(a) of Article 31 of the Tax Law imposes the additional transfer tax on each conveyance of residential real property or interest therein when the consideration for the entire conveyance is \$1 million or more. Section 1402-a(a) sets forth that the phrase "residential real property" shall include any premises that is or may be used in whole or in part as a personal residence, and shall include a one, two, or three-family house, an individual condominium unit, or a cooperative apartment unit. This section of the Tax Law further provides that the rate of the additional transfer tax shall be one percent of the consideration or part thereof attributable to the residential real property.

Analysis and Conclusion

Generally, for purposes of the additional transfer tax, a conveyance of a parcel containing separate structures to one grantee or related grantees is treated as constituting separate conveyances of each structure. An exception to this general rule is, for example, the conveyance of a one, two or three-family house, which is used as the main residence of a residential estate to one grantee or related grantees along with one or more ancillary structures, such as, for example, a guest house or servants' quarters. This conveyance would constitute the conveyance of residential real property subject to the additional real estate transfer tax if the consideration for the entire conveyance is \$1 million or more.

In the situation of this Petition, the Main Building is not residential real property for purposes of the additional transfer tax, as it has been converted to office space. Therefore, the conveyance would constitute separate conveyances of the ancillary structures (and the Main Building if it is not demolished prior to the conveyance) for purposes of the additional transfer tax. Accordingly, since the consideration for the conveyance of each of the ancillary structures is less than \$1 million and the Main Building is not residential real property, the additional transfer tax would not apply to these conveyances.

DATED: September 12, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.