

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

TSB-A-91 (2) R  
Real Property  
Transfer Gains Tax  
March 11, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M901207E

On December 7, 1990, a Petition for Advisory Opinion was received from KeyCorp, One KeyCorp Plaza, PO Box 88, Albany, New York 12201-0088.

The issue raised by Petitioner, KeyCorp, is whether transfers of interests in New York real property, by or through the Resolution Trust Corporation (hereinafter "RTC") are exempt from the payment of the Real Property Transfer Gains Tax (the "gains tax") pursuant to Section 1443(3)(b) of the Tax Law.

Petitioner entered into a Purchase and Assumption Agreement (the "Agreement") with RTC, Receiver of Empire Federal Savings Bank of America (hereinafter "Empire"), pursuant to Section 11(d)(2)(G) of the FDI Act. (12 U.S.C. Section 1821(d)(2)(G)).

Pursuant to the Agreement, Petitioner was granted exclusive options to accept assignment from RTC of any or all lease agreements for New York real property leased by Empire. The option period is for 120 days from the date of the closing of business for Empire.

Pursuant to the Agreement, RTC also granted Petitioner exclusive options to purchase New York real property owned by Empire. The option period is for 60 days from the date of receipt of an appraisal report for such owned property.

Petitioner will pay rent and all operating costs to RTC for its use and occupancy of the above real property interests during the option periods.

The gains tax is a ten percent tax on the gain derived from the transfer of real property, which includes the transfer or acquisitions of a controlling interest in any entity with an interest in real property, where the property is located in New York State and where the consideration for the transfer is one million dollars or more.

Section 1440.4 of the Tax Law defines the term "interest in real property" to mean:

4. "Interest" when used in connection with real property includes but is not limited to title in fee, a leasehold interest, a beneficial interest, an encumbrance, a transfer of development rights or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. Interest shall also include an option or contract to purchase real property.

Section 1443.3(b) of the Gains Tax Law provides, an exemption from the gains tax in the following cases:

"3. If the transferor is one of the following:

\* \* \*

(b) The United Nations or any other international organization of which the United States is a member, the United States of America or any of its agencies or instrumentalities." (emphasis added)

12 USC Section 1441a(b)(1) provides that RTC is an agency and instrumentality of the United States. In addition, 12 USC Section 1441a concerning exemption for the RTC from State and local taxation provides as follows:

(g) Exemption from State and local taxation. The Corporation and the Oversight Board, the capital, reserves, surpluses, or assets shall be exempt from State, municipal, and local taxation except taxes on real estate held by the Corporation, according to its value as other similar property held by other persons is taxed.

Further, 12 USC Section 1441a(b)(4) provides, in part, that the RTC shall have the same powers and rights to carry out its duties where it is the receiver of an insured depository institution as the Federal Deposit Insurance Company has under 12 USC Sections 1821, 1822 and 1823.

12 USC Section 1821(d) provides, in part, that the RTC as receiver, and by operation of law shall have all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, account holder, depositor, officer, or director of such institution with respect to the institutions and the assets of the institution.

Pursuant to 12 USC Sections 1441a(b)(4) and 1821(d), RTC as receiver and by operation of law is the transferor of all Empire's assets, which would include all its interests in real property. Interest in real property is defined pursuant to Section 1440.4 of the Tax Law to include fee interests, leasehold interests and options. However, Section 1443.3(b) of the Tax Law provides exemption from the gains tax where the transferor is an agency or instrumentality of the United States. Pursuant to 12 USC Section 1441a(b)(1) RTC is an agency and instrumentality of the United States. Also, RTC is exempt from State and local taxation pursuant to 12 USC Section 1441a(g). Accordingly, any transfers of interests in real property by RTC as receiver for Empire to Petitioner are exempt from gains tax.

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It is noted that this opinion does not address the gains tax consequences for the transfer of real property by Empire to RTC for which a gains tax filing may be required.

DATED: March 11, 1991

PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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