



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The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.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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Real Property Transfer
Gains Tax
July 10, 1992

1992 Amendments to the
Real Property Transfer Gains Tax

Article 31-B of the Tax Law, the tax on gains derived from certain real property transfers (the gains tax), was amended on June 16, 1992, through the enactment of Chapter 172 of the Laws of 1992.

Chapter 172 amends paragraph (b) of subdivision 3 of section 1447 of the Tax Law to release cooperative housing corporations and other secured parties from transferee liability for certain transfers of shares of stock in a cooperative housing corporation and the transfer of other ownership interests in entities (e.g., stock of a corporation or partnership interests) that result in a transfer of real property. Specifically, Chapter 172 provides that there shall be no transferee liability in the case of the following transfers:

- (1) the transfer of shares of stock in a cooperative housing corporation and or the associated proprietary leases to a cooperative housing corporation or other secured party; or
- (2) the transfer of other ownership interests in entities to a secured party that results in a transfer of real property (i.e., the transfer or acquisition of a controlling interest in an entity with an interest in real property),

but only if the transfers are pursuant to an action or proceeding to enforce a lien, security interest or other rights on or in shares or other ownership interests evidenced by stock certificates or other instruments, and a leasehold evidenced by a proprietary lease, or either of the foregoing.

This amendment does not however, relieve the transferor and the transferee from their obligation to comply with the pre-transfer audit filing procedure as provided in subdivisions 1 and 2 of section 1447 of the Tax Law.

Furthermore, in the case of such a transfer to a party named to act on behalf of the secured party, no transferee liability arises to the extent that a transfer of real property from the secured party to the party named to act on behalf of the secured party would result in a transfer of real property that is exempt as a mere change of identity or form of ownership or organization with no change in beneficial interest, pursuant to section 1443.5 of the Tax Law.

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For example, if the stock or partnership interest is transferred from a defaulted obligor, as transferor, to a wholly owned subsidiary of the secured party, as transferee, the wholly owned subsidiary would be relieved of transferee liability to the extent that the exemption provided for in section 1443.5 of the Tax Law would apply to a transfer of real property from the secured party to such wholly owned subsidiary.

A typical transaction that will be affected by the Chapter 172 amendments would be when a cooperative plan sponsor defaults in paying maintenance fees and other assessments to the cooperative housing corporation which fees and assessments relate to such sponsor's unsold cooperative shares and appurtenant proprietary leases, and the unpaid maintenance fees and assessments become a lien on the sponsor's unsold shares and/or proprietary leases. If, under the terms of the proprietary leases, the cooperative housing corporation enforces its security interests, arising from the sponsor's failure to make the payments, by seizing its collateral (i.e., the cooperative housing corporation cancels the shares of stock and terminates the proprietary leases), a transfer of real property occurs. In such a transfer, the sponsor is the transferor and the cooperative housing corporation is the transferee. If tax is due on this transfer, Chapter 172 provides that the cooperative housing corporation will have no transferee liability. This treatment would apply to similarly situated transferees such as banks, other financial institutions or individuals who enforce security interests in cooperative housing corporation shares and/or proprietary leases, or in interests in an entity which results in a transfer of real property (i.e., the transfer or acquisition of a controlling interest in an entity with an interest in real property).

Chapter 172 does not affect a cooperative housing corporation's liability or other secured party's liability, as transferor, when the corporation or other secured party transfers the shares of stock in the cooperative housing corporation or other ownership interests in entities to third parties.

Effective date

The provisions of Chapter 172 apply to transfers occurring on or after June 16, 1992, and before February 1, 1995.