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The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.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-95 (7)R
Real Property
Transfer Gains Tax
September 29, 1995

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"[1] 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 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...

---

[1] See TSB-M-94 (2) - R for information about "safe harbor estimates"

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 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 these transfers.

In computing the tax on future sales and computing the actual gain when the project is sold out, the sponsor must add the consideration received for the shares allocated to unit B to all other consideration received from the initial sale of shares allocated to the other units under the cooperative plan, at the next required update of the project. The sponsor will compute the tax due on 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 subsequently resells the shares allocated to unit A, the consideration received for that transfer need not be aggregated with the consideration received from the initial sales pursuant to the offering plan. The consideration derived from the resale of unit A will be aggregated only 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 20 NYCRR 590.61). While the regulation cited above deals specifically with IRC section 1031 exchanges, the position taken in the regulation applies to all types of exchanges. Thus, the consideration received by the transferor is the net fair market value of the property <u>received in</u> the exchange (i.e., fair market value less the principal amount of any mortgage, lien or other

encumbrance 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 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 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. The transfer would also be exempt from gains tax, even if the consideration were more than $1 million, if Mr. Jones used unit A exclusively as his residence. If Mr. Jones transferred other units and unit A was not his residence, the transfer would be exempt if the aggregated consideration for the sale of the shares allocated to unit A and the shares allocated to the other units is less than $1 million.