

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

TSB-A-96 (7) R  
Real Property  
Transfer Gains Tax  
June 27, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M960418A

On April 17, 1996 the Department of Taxation and Finance received a Petition for Advisory Opinion from Enid Morrison, P.O. Box 109, Old Westbury, New York 11568.

The issue raised by Petitioner, Enid Morrison, is whether the consideration from the transfer of two subdivided parcels is required to be aggregated for purposes of determining the application of the exemption for a transfer of real property when the consideration is less than \$1 million (the \$1 million exemption) under the Real Property Transfer Gains Tax (the "gains tax") imposed by Article 31-B of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion. Petitioner subdivided a parcel in 1992 into 5 parcels. Petitioner transferred one of the parcels in 1992. The Petitioner now plans to transfer two more of the parcels.

The purchaser in the present transfer intends to construct two single-family dwellings on the two parcels. The subdivision containing the parcels has been zoned for residential construction and has been substantially improved as roads and dry-wells have been constructed within the subdivision at an approximate cost of \$350,000.

Applicable Law

Section 1441 of the Tax Law imposes the gains tax on gains derived from the transfer of real property within this state at the rate of ten percent of the gain.

Also, Section 1440.7(b) of the Tax Law provides:

Transfer of real property shall include ... partial or successive transfers of interests in subdivided parcels of real property, without regard to the use of such real property or whether such transfers were pursuant to a plan or agreement; provided, however, that (A) the transfer of parcels located in a residential subdivision which have been substantially improved for residential use to a transferee who intends to construct residential dwellings on such parcels, or has constructed or is constructing residential dwellings on such parcels, and (B) the transfer of parcels located in a residential subdivision which have been improved or partially improved with a residential dwelling, other than transfers pursuant to a cooperative or condominium plan, shall not be deemed a single transfer of real property. Such substantial improvement may include the construction of streets, sewers or utility lines. The fact that such subdivision is a residential subdivision may be demonstrated by zoning restrictions

TSB-A-96 (7) R  
Real Property  
Transfer Gains Tax  
June 27, 1996

placed on such subdivided parcels or the existence of contracts entered into by the transferor to transfer developed parcels or by the transferee to build residences or other similar circumstances."

Conclusion

Based on the facts presented by Petitioner, the transfer of the three parcels will not be treated as a single transfer of real property for purposes of determining if the gains tax \$1 million exemption applies. Therefore, provided that the consideration attributable to each parcel is less than \$1 million, all three transfers are exempt from the gains tax.

DATED: June 27, 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.