

Instructions for Form TP-580 Real Property Transfer Gains Tax Questionnaire - Transferor

General Instructions

A. Imposition of Tax

A 10% tax is imposed on the gain derived from the transfer of real property, including a transfer or acquisition of a controlling interest in any entity with an interest in real property, where the real property is located in New York State and where the consideration for the transfer is \$1,000,000 or more.

B. Who Must File Questionnaires

Form TP-580, *Real Property Transfer Gains Tax Questionnaire - Transferor* and Form TP-581, *Real Property Transfer Gains Tax Questionnaire - Transferee*, must be completed and filed for each transferor real property located in New York State **except** for transfers pursuant to a cooperative or condominium plan where the initial gains tax submission was made on or after August 1, 1986. In these cases, the transferor's questionnaire is Form DTF-702, *Unit Submission Questionnaire*. See Form DTF-701-1, *Instructions for Forms DTF-701 and DTF-702, Real Property Transfer Gains Tax Questionnaires for Cooperatives and Condominiums*, for more information. Also see Section f of these instructions.

If, however, any of the conditions in items 1 through 7 below are met, the questionnaires need not be filed. Form TP-584 - Schedule B, *Real Property Transfer Gains Tax Affidavit*, affirming that the transfer of real property meets one of the conditions, must be filed.

1. The transfer of real property consists of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property.
2. The transfer is a transfer of real property where the consideration is less than \$500,000 and is neither (A) pursuant to a cooperative or condominium plan, nor (B) a partial or successive transfer (i.e., a transfer that is one of a series of transfers of contiguous or adjacent interests in real property or a transfer of subdivided parcels). If the transfer is pursuant to either (A) or (B) above, appropriate questionnaires must be filed even if the aggregate consideration is less than \$500,000.
3. The transfer is a transfer of real property by tenants in common, joint tenants or tenants by the entirety where the aggregate consideration is less than \$500,000.
4. The conveyance is not a transfer of real property within the meaning of section 1440.7 of Article 21-B of the Tax Law.
5. The transfer of real property consists of premises wholly occupied and used **exclusively** as a residence by the transferor, including a cooperative apartment or condominium occupied by the transferor exclusively as a residence.
Note: If only **part** of the premises is actually occupied and used as a residence by the transferor (e.g. 2-family house) and if the consideration for the entire property is \$500,000 or more, the questionnaires must be filed.
6. The transferor is New York state, or any of its agencies, instrumentalities, political subdivisions, or public corporations, including a public corporation created pursuant to an agreement or compact with another state or Canada.
7. The transferor is 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.

Form TP-584, *Combined Real Property Transfer Gains Tax Affidavit, Real Estate Transfer Tax Return, and Credit Line Mortgage Certificate*, must be used to affirm that the transfer of real property meets any of the conditions in items 1 through 7 above. Form TP-584 must be filed no later than the 15th day after the delivery of the instrument effecting the conveyance or transfer with the recording officer of the county where the real property transferred is located. If the transfer is not recorded, Form TP-584 must be filed no later than the 15th day after the conveyance of transfer, directly with: NYS Tax Department, TTTB - Transfer Tax, P O Box 5045, Albany, NY 12205-5045.

Note: A conveyance of an easement or license to a public utility company, where the consideration is \$2 or less and is clearly stated as actual consideration in the instrument of conveyance, does not require the filing of Form TP-582, *Tentative assessment and Return*, Form TP-584 or Form TP-584.2, *Combined Real Property Transfer Gains Tax Affidavit, Real Estate Transfer Tax Return for Public Utilities and Governmental Agencies*.

C. Exemptions

A total or partial exemption will be allowed in the following cases:

1. If the consideration is less than \$1,000,000; however, for the purpose of the application of this exemption only, consideration will be deemed to also include:
 - (a) In the case of a transfer of an option, the amount required to be paid for the real property pursuant to the option agreement being transferred, or in the case of a transfer or an acquisition of a controlling interest in any entity which owns an option, that amount multiplied by the percentage of the entity being transferred or acquired.
 - (b) In the case of an assignment of a contract to purchase real property, the amount required to be paid for the real property pursuant to the terms of the contract being transferred or in the case of a transfer or an acquisition of a controlling interest in an entity which owns a contract, that amount multiplied by the percentage of the entity being transferred or acquired.
 - (c) In the case of an assignment of a lease by the lessee, the present value of the remaining rental payments required to be made pursuant to the terms of such lease, or in the case of a transfer or an acquisition of a controlling interest in an entity which is a lessee of a lease, that amount multiplied by the percentage of the entity being transferred or acquired (Tax Law section 1443.1).
2. If the real property consists of premises occupied as a residence by the transferor, but only with respect to that portion of the premises actually occupied and used for such purpose (Tax Law section 1443.2).
3. If the transferor is one of the following:
 - (a) New York State, or any of its agencies, instrumentalities, political subdivisions, or public corporations, including a public corporation created pursuant to an agreement or compact with another state or Canada.
 - (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.
 - (c) An exempt organization as described in section 1116(a)(4) of the Tax Law (Tax Law section 1443.3).
4. Where the transfer of real property is to a corporation **upon its organization** solely in exchange for the stock or securities in such corporation if immediately after such transfer the person or persons making such transfer are in control. The term *control* means the ownership of stock possessing at least 80% of the total combined voting power or all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation (Tax Law section 1443.4).
5. If a transfer of real property, however effected, consists of a mere change of identity or form of ownership or organization, here there is no change in beneficial interest (Tax Law section 1443.5).
6. Where a transfer of real property occurring after March 28, 1983 (the effective date of Article 31-B), is pursuant to a written contract entered into on or before that date, provided that the date of execution of that contract is confirmed by independent evidence. A written agreement to purchase shares in a cooperative corporation will be deemed a written contract for the transfer of real property (Tax Law section 1443.6).

7. Where a transfer of real property consists of the execution of a contract to sell real property without the use or occupancy of that property or the granting of an option to purchase real property without the use or occupancy of that property (Tax Law section 1443.7).
8. Where the transfer is of real property on which a qualifying capital improvement has been constructed, the method of calculating the amount of this exemption is described in Section D, item 5(i) (Tax Law section 1443.8).

D. Definitions

1. (a) **Consideration** means the price paid or required to be paid for real property or any interest therein, less any customary brokerage fees related to the transfer if paid by the transferor, including payment for any option or contract to purchase or use real property. Consideration includes any price paid or required to be paid, whether expressed in a deed and whether paid or required to be paid by money, property, or any other thing of value and including the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether the underlying indebtedness is assumed or taken subject to. Consideration includes the cancellation or discharge of an indebtedness or obligation.
 - (b) In the case of (I) the granting of an option with use and occupancy of real property or (II) the creation of a leasehold or sublease that is a transfer of real property, as defined in item 7 of this section, consideration shall also include the present value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any option to purchase or renew included in that transfer and the present value of rental or other payments attributable to the exercise of any option to renew.
 - (c) In the case of a transfer which includes other assets that are in addition to real property or an interest therein and for which there is not reasonable apportionment of the consideration for that reasonable apportionment of the consideration for that real property or interest, consideration means that portion of the total consideration which represents the fair market value of the real property or interest. In the case of a transfer of a controlling interest in an entity with an interest in real property, there shall be an apportionment of the fair market value of the interest in real property to the controlling interest for the purpose of ascertaining the consideration for the transfer of the controlling interest.
 - (d) (I) In the case of a transfer of real property resulting from an action to foreclose a mortgage or lien pursuant to the provisions of the Real Property Actions and Proceedings Law, including such a transfer by a debtor in bankruptcy, where the mortgagee or lienor (or any agent or nominee thereof) if the successful bidder, consideration means the sum of (A) of the higher of the price paid by the mortgagee or lienor (the bid price) or the amount of the judgment of foreclosure and sale and (B) the amount of all other liens or encumbrances remaining on the real property or interest therein after the transfer, whether the underlying indebtedness is assumed or taken subject to. However, consideration shall not exceed the fair market value of the real property or interest therein.
 - (II) In the case of transfer of real property to a mortgagee or lienor (or to any agent or nominee thereof) in lieu of foreclosure or any other action to enforce a security interest, including such a transfer by a debtor in bankruptcy, consideration means the sum of (A) the unpaid balance of the debt secured by the mortgage or lien and (B) the amount of all other liens or encumbrances remaining on the real property or interest therein after the transfer, whether the underlying indebtedness is assumed or taken subject to. However, consideration shall not exceed the fair market value of the real property or interest therein.
 - (III) In the case of a transfer of real property or an interest therein pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock of a cooperative housing corporation and associated proprietary lease, including such a transfer by a debtor in bankruptcy, consideration means the sum of (A) the unpaid balance of the debt secured by such lien, security interest, or other rights, (B) the total amount of all other liens, security interests or other interests remaining on the shares of stock of the cooperative housing corporation and associated proprietary lease after the transfer, whether the underlying indebtedness is assumed or taken subject to and (C) a pro rata portion of the total amount of all other liens or encumbrances on the real property of the cooperative housing corporation that remain after the transfer. However, consideration shall not exceed the fair market value of such shares of stock of the cooperative housing corporation and associated proprietary lease.
2. **Controlling interest** means (I) in the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of the corporation, or 50% or more of the capital, profits or beneficial interest in such voting stock of the corporation, and (II) in the case of a partnership, association, trust or other entity, 50% or more of the capital, profits or beneficial interest in the partnership, association, trust or other entity.
3. **Gain** means the difference between the consideration for the transfer of real property and the original purchase price of the property, where the consideration exceeds the original purchase price.
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** also includes an option or contract to purchase real property.
5. (a) (I) **Original purchase price** means the consideration paid or required to be paid by the transferor (A) to acquire the interest in real property, and (B) for any capital improvements made or required to be made to such real property, including solely those costs which are customary, reasonable and necessary, as determined under rules and regulations prescribed by the Commissioner of Taxation and Finance, incurred for the construction of such improvements. (II) Original purchase price also includes the amounts paid by the transferor for any customary, reasonable and necessary legal, engineering and architectural fees and any customary, reasonable and necessary advertising and marketing costs not included in customary brokerage fees incurred by the transferor to sell the property and those customary, reasonable and customary brokerage fees incurred by the transferor to sell the property and those customary, reasonable and necessary expenses incurred to create ownership interests in property in cooperative or condominium form, as such fees and expenses are determined under rules and regulations prescribed by the Commissioner of Taxation and Finance. (III) Original purchase price also includes any tax paid by the transferor to record a mortgage, including the special additional mortgage recording tax: (A) securing a debt incurred by the transferor to acquire the real property, (B) securing a debt incurred by the transferor to construct a capital improvement on such property, or (C) created as a result of the conveyance of title to a cooperative housing corporation. (IV) Original purchase price also includes any interest paid or required to be paid by the transferor on a loan which was used to acquire the real property; provided that such amount of interest shall be limited to the interest which accrues during a construction period, as defined in Tax law section 1440.5(h) and subject to the rules and regulations prescribed by the Commissioner, and which is attributable to that portion of the real property which is the subject of the construction of a capital improvement during such construction period. (v) Original purchase price includes any New York state real estate transfer tax, new York city real property transfer tax, and any similar real estate transfer tax paid or required to be paid by the transferor upon the transfer of real property by the transferor when that transfer is subject to tax under Article 31-B. (VI) Original purchase price includes such costs, fees and expenses incurred by the transferor to acquire a full or partial real estate tax exemption available under section 421-a of the Real Property Tax Law, which costs, fees and expenses are customary,

- reasonable and necessary as determined under rules and regulations prescribed by the Commissioner. However, the amount of such costs, fees and expenses incurred by the transferor that may be included in original purchase price shall be determined by multiplying the total amount of such costs, fees and expenses by a fraction whose numerator is the number of months remaining at the time of the transfer in which such real estate tax exemption may be claimed, and whose denominator is the total number of months such real estate tax exemption could be claimed. (VII) Original purchase price includes amounts paid or required to be paid by the transferor for costs, fees and expenses (including brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease) incurred in connection with the creation of a leasehold or sublease with respect to which the real property is subject at the time of transfer, when those costs, fees and expenses are customary, reasonable and necessary as determined under rules and regulations prescribed by the Commissioner and are not otherwise included in original purchase price. However, such costs, fees and expenses incurred in connection with the creation of a lease or sublease may be included in original purchase price only to the extent of the unexpired term of the lease or sublease determined as of the date of transfer. The amount of such costs, fees and expenses included in the original purchase price is determined by multiplying the total amount of such costs, fees and expenses by a fraction whose numerator is the number of months remaining on the term of the lease or sublease as of the date of transfer, determined without regard to any unexercised options to renew such lease or sublease, and whose denominator is the sum of (A) the number of months of the expired portion of the term of such lease or sublease at the time of transfer and (B) the number of months remaining on the term of such lease or sublease at the time of transfer, determined without regard to any unexercised options to renew such lease or sublease.
- (b) In the case of a transfer of real property by a gift, devise, bequest or inheritance, the original purchase price of the real property in the hands of the transferee immediately after the transfer shall be the same as the original purchase price of such property in the hands of the transferor immediately before the transfer.
- (c) The transferee of every transfer of real property for which exemption is granted, pursuant to section 1443.1 of Article 31-B on the basis that no consideration was paid for such transfer, shall be bound by a determination of original purchase price as determined by paragraph (b) above, if such transferee participated in filing the forms upon which such exemption was granted.
- (d) In the case of the creation of a lease or option with use and occupancy, the original purchase price means the amount described in paragraph (a) above which related to the real property or interest therein which is being leased, multiplied by a fraction whose numerator is the value of the rental payments under the lease plus the amount paid for an option, if any, and whose denominator is the fair market value of the real property.
- (e) The consideration, described in section 1440.1(b) of Article 31-B, (see item 1(b) of this section) used to calculate gain on a taxable lease plus the original purchase price of the property not previously transferred shall become such lessor's original purchase price of the interest in the real property leased provided that such lessor paid the gains tax on such lease or is paying such tax pursuant to the installment payment provisions of section 1442 of Article 31-B.
- (f) In the case of the creation of a sublease, original purchase price includes the value of the remaining rental payments required to be made pursuant to the terms of the prime lease during the term of such sublease
- (g) In the case of a transfer of a controlling interest in an entity with an interest in real property, there shall be an apportionment of the original purchase price of the interest in real property to the controlling interest for the purpose of ascertaining the original purchase price of such controlling interest.
- (h) The **construction period** for real property **begins** on the date when the transferor begins to actively pursue a plan of construction, development or complete renovation of all or part of the real property to which the plan relates. Activities evidencing the fact that the transferor has begun to actively pursue the plan include, but are not limited to, the following: authorizing the preparation of architectural and construction plans; retaining contractors; seeking zoning approvals, building permits or other pre-construction approvals from government or regulatory agencies; authorizing the preparation of feasibility studies or environmental impact studies; making arrangements to obtain substantially all of the funds necessary for the payment of the construction costs; arranging for the demolition of existing structures on the construction site; and conducting soil tests or other engineering studies. The fact that the transferor has undertaken any of the foregoing activities, in and of itself, does not determine whether the construction period has begun. The transferor's overall actions must demonstrate affirmatively that the transferor has begun to actively pursue a plan of construction, development or complete renovation of all or part of the real property to which the plan relates.
- (A) For real property that is being held by the transferor for the transferor's own use, the construction period **ends** for such property when the construction, development or complete renovation of the real property is suspended or when the real property is ready to be placed in service. When construction, development or complete renovation of the real property is completed in sections or units, leaving part of the real property capable of being placed in service while construction, development or renovation continues on other sections or units of the real property, the construction period for each section or unit ends when that section or unit is ready to be placed in service.
- (B) For real property that is held for sale, lease or sublease, the construction period for the property ends when the construction, development or complete renovation of the real property is suspended, or
- (1) for real property that the transferor sells, leases or subleases in its entirety, when the property is sold, leased or subleased,
 - (2) for real property that the transferor sells by sections or units, when all the sections or units are ready to be placed in service and 50% of the sections or units are sold, **or**
 - (3) for real property that the transferor leases or subleases by sections or units, when all the sections or units are ready to be placed in service and 50% of the sections or units are leased or subleased.
- However, for real property that the transferor sells, leases or subleases by sections or units, the construction period, ends for each section or unit when that section or unit is sold, leased or subleased, or when the construction period for the real property ends pursuant to (2) or (3) above, whichever is earlier.
- Where only a portion of the real property is being constructed, developed or completely renovated, the rules described in (A) and (B) above apply to that portion in determining when the construction period for such portion ends.
- For purposes of this definition, real property or section or unit thereof shall be considered to be leased or subleased on the earlier of the date when such real property, section or unit is occupied by the tenant or the date when the tenant's obligation to pay rent for the real property, section or unit begins to accrue.
- (I) Pursuant to section 1443.8 of Article 31-B, in the case of the transfer of real property on which a **qualifying capital improvement** has been constructed, there shall be added to original purchase price the amount of **qualifying capital improvement costs** that are properly accruable to the **qualifying period** to construct such qualifying capital improvement. However, in the case of the transfer of real property that consists of a building or other structure on which a qualifying capital improvement has been constructed, the qualifying capital improvement has been constructed, the qualifying capital improvement costs properly accruable to the qualifying period shall be included in original purchase price only if the total amount of the qualifying capital improvement costs incurred to construct such qualifying capital improvements exceeds:

- (1) for real property acquired by the transferor after 12/31/84, **15%** of the original purchase price attributable to the building or other structure, excluding the original purchase price attributable to the building or other structure, excluding the original purchase price attributable to the land, determined immediately prior to the start of the qualifying period, or
- (2) for real property acquired by the transferor before 1/1/85, **25%** of the original purchase price attributable to the building or other structure, excluding the original purchase price attributable to the land, determined immediately prior to the start of the qualifying period.

Qualifying capital improvement means a capital improvement to real property for which construction actually begins on or after 1/1/94 and before 7/1/97 and which is distinct and separate from any other capital improvement to such real property for which construction actually began prior to 1/1/94. For purposes of this definition, the construction of a capital improvement actually begins when the plan of construction is essentially implemented and the physical labor directly related to the construction of such capital improvement starts.

Qualifying period means that period of time beginning on the day the construction of a qualifying capital improvement actually begins and ending on the earlier of 6/30/99 or the date the qualifying capital improvement is ready to be placed in service. However, each qualifying capital improvement that is distinct and separate from any other qualifying capital improvement shall have its own qualifying period.

Qualifying capital improvement costs means all costs incurred for the construction of a qualifying capital improvement which are otherwise included in original purchase price pursuant to Tax Law section 1440.5, other than legal fees, interest, points and fees related to loan whose proceeds were used either to make such capital improvements or acquire the real property, insurance costs, real property taxes, advertising and marketing costs, accounting fees, mortgage recording taxes, and other similar costs as determined under the rules and regulations prescribed by the Commissioner.

6. **Real property** means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon and leaseholds that are located in whole or in part within the state. It does not include rights to sepulture. For purposes of the gains tax, there shall be apportionments of consideration and original purchase price in connection with the transfer of real property located partly within the state and partly without the state.

7. (a) **Transfer of real property** means the transfer of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where (i) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (ii) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (iii) the lease or sublease is for substantially all of the premises constituting the real property.

- (b) Transfer of real property shall include:
- (i) partial or successive transfers of interests in contiguous or adjacent real property by a transferor or related transferors to one or more transferees, if the transfers occur within a three-year period, without regard to the use of the real property or whether the transfers were pursuant to a plan or agreement. However, the consideration from a transfer of real property by a transferor is not aggregated with the consideration from a transfer of real property by the transferor's estate and consideration from the following transfers of real property is not aggregated with consideration from any other transfer: a transfer

of real property pursuant to a mortgage foreclosure or any other action to enforce a lien or security interest; a transfer of real property upon liquidation or by a receiver; a transfer of real property pursuant to a taking by eminent domain; or a transfer of real property pursuant to a divorce proceeding;

- (ii) partial or successive transfers of interests in real property by tenants in common, joint tenants or tenants by the entirety of such real property to one or more transferees, if the transfers occur within a three-year period, without regard to the use of the real property or whether the transfers were pursuant to a plan or agreement;
- (iii) partial or successive transfers made pursuant to a cooperative or condominium plan. Transfers pursuant to a cooperative plan include all transfers of stock in a cooperative corporation that owns real property; and
- (iv) partial or successive transfers of interests in subdivided parcels or real property, without regard to the use of the real property or whether the transfers were pursuant to a plan or agreement; however, (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, 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, are not deemed a single transfer of real property. Such substantial improvement may include the construction of streets, sewers or utility lines. The fact that a subdivision is a residential subdivision may be demonstrated by zoning restrictions placed on the 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.

(c) Notwithstanding the foregoing, transfer of real property shall not include a transfer pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to the New York State Tax Law or the Internal Revenue Code as amended.

8. **Person** means an individual, corporation, partnership, association, trust, estate or other entity, or an officer or employee of any corporation (including a dissolved corporation), or a member or employee of any partnership, who as such officer, employee or member is under a duty to perform an act required under Article 31-B.
9. **Person liable for the tax** means a person who is personally liable for the tax whether as a transferor or as a transferee pursuant to section 1447.3(a) of Article 31-B.

E. Allocation

1. If the transfer of real property consists **partly** of premises actually occupied and used as a residence by the transferor, the gain is subject to tax if the consideration for the entire real property is \$1,000,000 or more. However, in computing the gain subject to tax, the original purchase price and the consideration received must be apportioned between the portion not occupied and used as a residence by the transferor and the portion actually occupied and used as a residence by the transferor. Attach a separate sheet of paper indicating the amount and basis of the location.
2. If the transfer includes real property located partly within and partly without New York State, an apportionment of the consideration in connection with the transfer may be made based on the ratio of the fair market value of the real property located within New York State to the fair market value of the real property located both within and without New York State. Where the consideration so determined is \$1,000,000 or more, compute the tax using such consideration. Where the transfer is an "arms length" sale and a portion of the total consideration is allocated to the real property located within New York State, such consideration will be considered the fair market value for the purpose of the aforesaid computation. Attach a separate sheet of paper indicating the amount and basis of the allocation to New York State.

3. If the transfer includes real property and property other than real property and there is no reasonable apportionment of the consideration for the real property, the consideration shall be that portion of the total consideration that represents the fair market value of the real property. Where the consideration so determined is \$1,000,000 or more, compute the tax using such consideration. Attach a written statement describing the real property and the property other than real property and indicate the value of each.
4. In the case of a transfer or acquisition of a controlling interest in a corporation, partnership or other entity with an interest in real property, an apportionment of the fair market value of the interest in real property to the controlling interest must be made for the purpose of ascertaining the consideration for the transfer. Where the consideration so determined is \$1,000,000 or more, compute the tax using such consideration. In addition, an apportionment of the original purchase price of the interest in real property to the controlling interest must be made for the purpose of ascertaining the original purchase price. Attach a separate sheet of paper setting forth the fair market value of the interest in real property and a description and valuation of the other property transferred.
5. If the transfer is subject to any other apportionment under Article 21-B of the Tax Law, attach a written statement setting forth the nature, circumstances and valuation which entered into the apportionment.

F. Transfers Pursuant to Cooperative or Condominium Plans

Transfers pursuant to cooperative or condominium plans are subject to the gains tax if the aggregate consideration for all transfers pursuant to the plan will be \$1,000,000 or more. Therefore, forms must be completed and tax may be due even though the consideration for each cooperative or condominium unit may be less than \$1,000,000.

If your initial gains tax cooperative or condominium submission was filed prior to August 1, 1986, you may continue to file this questionnaire in accordance with these instructions and TSB-M-83-(2)-R for all subsequent unit filings and updates.

For all initial submissions filed after August 1, 1986, and for those pre-August 1, 1986, filers who elect to file under the procedures for Safe Harbor estimates, see Form DTF-701-I for the list of forms to be filed and the applicable instructions. TSB-M-94(2)-R provides an explanation and the procedure for computing the safe harbor estimates.

You may order forms by calling toll free (from New York State only) 1 800 462-8100. From areas outside New York State, call (518) 438-1073.

Note: If a cooperative or condominium unit is transferred after March 28, 1983, pursuant to a written contract entered into on or before March 28, 1983, no tax will be imposed on the transfer of such unit. However, if some of the units of a cooperative or condominium plan were unsold as of March 28, 1983, tax will be imposed on the transfer of such units remaining unsold if the anticipated aggregate consideration for the sale of all such remaining units is \$1,000,000 or more.

G. Partial or Successive Transfers Other Than Cooperatives and Condominiums

Partial or successive transfers of real property are subject to the gains tax if the aggregate consideration for such partial or successive transfers will be \$1,000,000 or more.

The consideration from partial or successive transfers of interests in contiguous or adjacent real property by a transferor or related transferors to one or more transferees will be aggregated if the transfers occur within a three-year period, with certain exception. The consideration from a transfer of real property by a transferor will not be aggregated with the consideration from a transfer by such transferor's estate. In addition, the consideration from the following transfers will not be aggregated with the consideration from any other transfer for purposes of this provision: a transfer of real property

pursuant to a mortgage foreclosure or any other action to enforce a lien or security interest, a transfer of real property upon liquidation or by a receiver, a transfer of real property pursuant to a taking by eminent domain or a transfer of real property pursuant to a divorce proceeding.

If partial or successive transfers of interests in contiguous or adjacent real property occur before and after 6/9/94, the consideration from the transfers occurring before 6/9/94 would be aggregated with the transfers occurring on or after 6/9/94 if the transfers occur within a three-year period and both transfers would have been aggregated under the law and rules that were in effect prior to 6/9/94. The consideration from partial or successive transfers of interests in real property by tenants in common, joint tenants or tenants by the entirety of such real property to one or more transferees will be aggregated if the transfers occur within a three-year period and the transfers occur on or after 6/9/94. However, the consideration from such transfers that occur before 6/9/94 will be aggregated with transfers that occur on or after 6/9/94 only if both transfers occurred with a three-year period.

The consideration from partial or successive transfers of interest in subdivided parcels of real property will be aggregated. However, consideration from the transfer of parcels located in a **residential subdivision** will not be aggregated where those parcels have been substantially improved for residential use and transferred to a transferee who intends to construct residential dwellings on such parcels or has constructed or is constructing residential dwellings on the parcels. In addition, the consideration from the transfer of parcels located in a residential subdivision which have been improved or partially improved with a residential dwelling will not be aggregated.

Although the consideration from certain transfers as described above may not be aggregated to determine if tax is due, if the consideration for any such transfer is \$1,000,000 or more, tax may be due. For purposes of determining the anticipated tax due for partial or successive transfers which are required to be aggregated, an apportionment of the aggregate consideration anticipated under the plan and the original purchase price of the real property must be made for each partial or successive transfer. However, no tax is due until the consideration paid or required to be paid for the real property equals or exceeds \$1,000,000. **Notwithstanding the foregoing, questionnaires must be filed for each partial or successive transfer even if the aggregated consideration is less than \$500,000.**

In addition, in the case of a partial or successive transfer, the date of transfer will be deemed to be the date on which each partial or successive transfer of the aggregated transfer is transferred.

H. Capital Improvements

A **capital improvement** is for the most part an improvement, a modification, a betterment, or an addition made to real property.

To qualify as a capital improvement, an improvement, modification, betterment or addition must meet the following requirements:

1. it is intended to be permanently affixed to the real property; and
2. has a useful life substantially beyond the year following installation.

The term *capital improvement* does not include the repair or maintenance of real property.

A **construction period** is a period of time in which necessary activities are conducted to bring the capital improvement on the real property to that state or condition necessary for its intended use. The construction period begins when the transferor begins to actively pursue a plan of construction, development or complete renovation. The construction period ends when the real property is ready to be placed in service or when the real property is sold or leased. See *General Instructions*, Section D, item 5(h) for a complete definition.

I. Acquisition, Construction, Selling and Other Expenses

In addition to the consideration paid to acquire an interest in real property and the consideration paid to make capital improvements to real property, certain other costs, fees and expenses, including certain acquisition, construction and selling expenses, may be included in original purchase price.

The allowable acquisition and construction expenses are those customary, reasonable and necessary expenses paid by the transferor either to acquire the real property or to make capital improvements to the real property. Allowable acquisition costs include attorney's fees, appraisal fees, architectural and/or engineering fees, title exams and insurance, and mortgage recording taxes including the special additional tax paid to record a mortgage on acquisition. Allowable construction expenses are costs that relate directly to the capital improvement made to the property being transferred such as: architectural and/or engineering fees, interest paid or required to be paid during a construction period on loans where the proceeds of such loans were used to acquire the real property or to make capital improvements, construction period real property taxes, mortgage recording taxes including the special additional tax paid to record a building loan mortgage, fees and permits required to construct the improvement, and demolition and debris removal.

The allowable selling expenses are those customary, reasonable and necessary legal, engineering, architectural fees, and advertising and marketing costs not included in customary brokerage fees paid by the transferor which are incurred to sell the real property.

New York State real estate transfer tax, New York City real property transfer tax, and any similar real estate transfer tax paid by the transferor on the transfer of the real property by the transferor may be included in original purchase price.

Other allowable expenses include customary, reasonable and necessary costs, fees and expenses to acquire a full or partial real estate tax exemption available under section 421-a of the Real Property Tax Law. However, these costs, fees and expenses may be included only to the extent of a percentage that relates to the time remaining as of the time of the real property transfer during which the real estate tax exemption may be claimed. In addition, allowable expenses include lease-up costs, i.e. amounts paid or required to be paid by the transferor for costs incurred in connection with the creation of a lease or sublease that is in existence at the time that the real property is transferred. These costs, which include brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease, must be customary, reasonable and necessary as determined under rules and regulations prescribed by the Commissioner. However, these costs, fees and expenses may be included only to the extent of a percentage that relates to the unexpired term of the lease or sublease, determined as of the date of transfer.

Allowable, expenses incurred to create ownership interests in property in cooperative or condominium form are set forth on Form DTF-700, *Real Property Transfer Gains Tax Schedule of Original Purchase Price for Cooperatives and Condominiums*.

J. Penalties and Interest

Interest is compounded daily and must be paid on any underpayment of tax, including any tax which has not been paid because the transferor elected to pay the tax in installments. Interest is a charge for the use of money and may not be waived.

The **penalty** and **interest penalty** provisions of the Tax Law were amended effective September 12, 1993. These amended provisions apply to liabilities relating to transfers of interests in real property where the statute of limitations for determination of tax under section 1444.3 has not expired as of September 12, 1993 and no notice of determination has been issued as of that date.

Failure to timely file and late payment penalty - Any person failing to file a tentative assessment and return within the time required will be subject to a penalty of 10% of the amount of tax due. Any person failing to pay the tax shown on the tentative assessment and return within the time required will be subject to a penalty of 10% of the tax shown on the tentative assessment and return. In addition, an interest penalty of 2% of the tax due will be imposed for each month or part of a month after the expiration of the first month in which the tentative assessment and return was required to be filed but was not filed, or the tax shown on the tentative assessment and return became due but was not paid, up to a maximum of 25%. The penalty will not be less than \$100 for each transfer of real property or partial or successive transfer of real property.

If the Commissioner of Taxation and Finance determines that such failure or delay was due to reasonable cause and not due to willful neglect, the Commissioner shall remit, abate or waive all or part of such penalty and such interest penalty.

Negligence penalty - If the failure to pay any amount of tax required to be shown on a tentative assessment and return is due to negligence or intentional disregard of the Tax Law or the applicable rules or regulations, but no with intent to defraud, a penalty of 5% of the amount of tax due will be charged. In addition, 50% of the interest due on the portion of any underpayment resulting from negligence or intentional disregard will be added to the tax.

Penalty for understating tax - If an understatement of tax exceeds the greater of 10% of the tax required to be shown on the tentative assessment and return or \$5,000, you will have to pay a penalty of 10% of the amount of the underpayment attributable to the understatement. In the case of transfers pursuant to a cooperative or condominium plan or other partial or successive transfers, the penalty will apply if the total amount of tax required to be shown on all tentative assessments and returns filed for the transfers included within the audit is understated as described above. The understatement is reduced by the amount of tax which is attributed to the tax treatment of any item for which (1) there is or was substantial authority or (2) the relevant facts affecting the item's tax treatment are or were adequately disclosed in the pre-transfer audit filing.

The Commissioner may waive all or any part of the penalty for understating tax if the person liable for the tax (1) can show that there was reasonable cause for the understatement and (2) acted in good faith.

Fraud Penalty - If the failure to pay any tax within the time required is due to fraud, in lieu of the above failure to timely file, late payment and negligence penalties, a penalty of 50% of the amount of tax due will be charged. In addition, 50% of the interest due on the portion of any underpayment resulting from fraud will be added to the tax.

Criminal Penalty - Any person who willfully violates any provision of Article 31-B of the Tax Law shall be guilty of a misdemeanor.

K. Privacy notification

Our authority to require and maintain personal information, including social security numbers, is found in subdivisions First and Fourteenth of section 171, and sections 1447, 1447-a, and 1448 of the Tax Law.

We will use this information to administer the real property gains tax under Article 31-B of the Tax Law and for any other purposes authorized by law.

Your failure to provide the required information may result in civil or criminal penalties, or both, under Articles 31-B and 37 of the Tax Law.

This information will be maintained by the Director, Data Management Services Bureau, NYS Tax Department, Building 8, Room 905, W. A. Harriman Campus, Albany, NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from outside New York State, call (518) 438-8581.

L. When and Where to File

These questionnaires and any required information or documentation must be submitted together to the NYS Tax Department, TTTB - Gains Tax, P O Box 5045, Albany, New York 12205-5045, at least 20 days prior to the anticipated date of transfer.

A Form TP-582, Tentative Assessment and Return, will be issued to the transferor by the Department within 20 days of receipt of the perfected questionnaires and supporting documentation. Instructions for filing Form TP-582 will be issued with that form. See Form TP-581-I, *Instructions for Form TP-581, Questionnaire - Transferee*, for the procedure to be followed by the transferee.

Note: Form TP-581, *Questionnaire - Transferee* must be attached to Form TP-580, *Questionnaire - Transferor*.

Specific Instructions

Schedule A

- Line 1 -** For purposes of the application of the \$1,000,000 exemption, if the total consideration for the transfer is \$1,000,000 or more (whether or not you will claim exemption from the tax) check the box. See *General Instructions*, Section C, item 1.
- Line 2 -** If the transferor is eligible to receive any additional consideration which is not determinable as of the date of transfer, check the **Yes** box. Attach an explanation providing the specific details. Include a description of how the contingent consideration is to be computed, any limits or conditions with respect to such consideration and the period of time for calculation and/or receipt of the contingent consideration, if known. For example, contingent consideration may be based on a percentage of sales over a designated dollar amount for a specified number of years.
- Line 3 -** If the transfer of real property is pursuant to a cooperative or condominium plan or other partial or successive transfer, check the box. See *General Instructions*, Sections F and G, for information concerning these types of transfers.
- Line 4 -** If the transferor is claiming a total or partial exemption from the tax, check the applicable box or boxes. See *General Instructions*, Section C for a list of exemptions. The documentation required to substantiate the exemption is on the back of Form TP-580.
- Line 7 -** Enter the amount of selling expense you are claiming. See *General Instructions*, Section I, for a discussion on allowable selling expenses.
- Line 8 -** Enter the amount of any New York State, New York City or other local real estate transfer tax that will be paid or will be required to be paid by the transferor upon the transfer of the real property or interest in real property.
- Line 9 -** Enter the costs, fees and expenses you incurred to acquire a full or partial real estate tax exemption under section 421-a of the Real Property Tax Law. However, these costs, fees and expenses must be prorated by multiplying the total costs by a fraction whose numerator is the number of months remaining at the time of the transfer in which such real estate tax exemption may be claimed, and whose denominator is the total number of months such real estate tax exemption could be claimed.
- Line 10 -** Enter the costs, fees and expenses incurred in connection with the creation of a lease or sublease that the real property is subject to at the time of transfer. This includes brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease. However, these costs, fees and expenses must be prorated by multiplying the total costs by a fraction whose numerator is the number of months remaining on the term of the lease or sublease as of the date of transfer, determined without regard to any unexercised options to renew such lease or sublease, and whose denominator is the sum of the number of months of the expired portion of the term of such lease or sublease at the time of the transfer and the number of months remaining on the term of the lease or sublease at the time of the transfer, determined without regard to any unexercised options to renew such lease or sublease.

Schedule B

- Line 1 -** Enter the gross consideration to be paid for the transfer by the transferee, but **do not** subtract brokerage fees paid by the transferor. This amount will be subtracted at line 2. Include brokerage fees to be paid by the transferee to the transferor or brokerage fees paid by the transferee on **behalf** of the transferor. See *General Instructions*, Section D, item 1 for the definition of consideration. If the consideration is allocated, see *General Instructions*, Section E; enter the allocated amount.
- Line 2 -** Enter the amount of brokerage fees related to the transfer to be paid by the transferor or paid by the transferee on behalf of the transferor.
- Line 3 -** Subtract line 2 from line 1.
- Line 4 -** Enter the purchase price paid to acquire the interest in the real property. If the property was acquired through gift, devise, bequest or inheritance, enter the purchase price paid by the last transferor who paid consideration to acquire the interest in the real property. See *General Instructions*, Section D, item 5 for the definition of original purchase price. If the purchase price is allocated, see *General Instructions*, Section E; enter the allocated amount. Also, enter the date of purchase.
- Line 5 -** Enter the amount paid for other acquisition costs the transferor incurred in the process of acquiring the real property. See *General Instructions*, Section I, for a discussion on allowable acquisition costs.
- Line 6 -** Enter the cost of any capital improvements made or required to be made by the transferor to the real property. If the property was acquired through gift, devise, bequest or inheritance, also enter the cost of any capital improvements paid by intervening transferors since the last transferor who paid consideration to acquire the interest in the real property. See *General Instructions*, Sections H and I.
- Line 11 -** Add line 4 through line 10.
- Line 12 -** Subtract line 11 from line 3.
- Line 13 -** Enter any total or partial exemption claimed. See *General Instructions*, Section C, for a discussion on exemptions.
- Line 14 -** Subtract line 13 from line 12
- Line 15 -** Multiply line 14 by 10%.
- Documentation Required**
Follow the instructions shown on the back of Form TP-580. If the required documentation is not submitted, the questionnaire is incomplete and its processing may be delayed.
- Affidavit of Transferor**
The questionnaire must be acknowledged before a notary public.