

STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
601 DELAWARE AVENUE
WILMINGTON, DELAWARE 19899

TAX NEWSGRAM 73-16

July 20, 1973

REALTY TRANSFER TAX

- Application of Realty Transfer Tax to Certain Leases and Documents Pertaining to Interests in Real Estate.

House Bill 549, with House Amendment No. 1, amends Chapter 54, Title 30, Delaware Code by adding new Subsections to Section 5401 thereof as follows:

"(d) The term 'document' defined in Subsection (a) above shall include the following:

(1) any writing purporting to transfer interest or possessory interest for a term of more than 5 years in a condominium unit or any unit properties subject to the Unit Property Act;

(2) any writing purporting to transfer a title interest or possessory interest under a lease for a term of more than 5 years;

(3) any writing purporting to transfer a title interest or possessory interest of any lessee or other person in possession of real estate owned by the State or other political subdivision thereof;

(4) the exercise of any right or option to renew or extend a title or possessory interest in an existing lease where such extension or renewal is for a term of more than five years.

(e) In determining the term of a lease under Subsection (d) above, it shall be presumed for the purpose of computing the lease term that any rights or options to renew or extend will be exercised.

(f) For purposes of Subsection (c), in the case of a document described in Subsection (d) under which the consideration is based in whole or in part on a percentage of the income or receipts to be received in the future, actual consideration shall include the amounts actually received under such percentage of income or receipts provision; provided, however, and notwithstanding any other provisions of this Chapter, the tax imposed by this Chapter shall be due and payable to the Division of Revenue within 30 days after the date such amounts become due and payable under the agreement."

Under the Bill any document described above must be recorded with the Office of the Recorder of Deeds within 15 days of the transaction. A Realty Transfer tax of 2% of the value of the property represented by such document is imposed. The portion of the tax attributable to the consideration to be received during the first year of the lease term must be paid at the time the instrument is recorded. The tax attributable to the consideration to be received in each successive year shall be paid directly to the Division of Revenue within 15 days of the anniversary date of the execution of the agreement.

The law applies to commercial and business leases where the term of the lease exceeds five years. To the extent that an instrument transferring an interest in a condominium unit or cooperative constitutes a bona fide lease and is not subject to the Realty Transfer tax under present law, such transaction will be subject to these provisions.

The law provides that "options to renew" shall be treated as exercised. For example, if a lease agreement provides for a term of three years with the right or option to renew the lease for an additional three years it shall be presumed for purposes of this act that the option will be exercised and, therefore, the agreement will be treated as a lease for six years which is subject to the tax.

The provisions of this act apply to interests transferred by documents executed on or after July 7, 1973.


Russell M. Cory
Director of Revenue

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