



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
CARVEL STATE BUILDING  
820 N. FRENCH STREET  
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE  
TAX RULING 92-2

February 6, 1992

SUBJECT: REALTY TRANSFER TAX--SUBLEASES ON PROPERTY OWNED BY THE STATE.

CODE SECTION AFFECTED: 30 DEL. C. § 5401(4)

Questions have arisen concerning whether a sublease by the lessee of real property of which the State or one of its political subdivisions is the lessor constitutes a "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" within the meaning to 30 Del. C. § 5401(4)b. thereby subjecting such sublease to the State's realty transfer tax.

Solely for purposes of paragraph b. of § 5401(4) the phrase "transfer . . . [a] possessory interest" appearing in said paragraph G. shall be deemed to be synonymous with "assign a lease or other possessory interest." Such phrase is not intended to include within its meaning the sublease of real property owned by the State or any of its political subdivisions. Allowing the terms of § 5401(4)b. to reach such a sublease would extend the tax to virtually all leases on property in communities such as Lewes and Arden where fee simple title to land typically continues with the community and where all rights to real estate typically pass by means of leases. In these communities what are ordinarily viewed as leases are actually subleases. As is evident in paragraph b., it is apparent that the drafters of subdivision (4) of § 5401 used terms somewhat loosely, and this ruling is intended to narrow the application of overly broad language. Accordingly, it may not be appropriate to assume that the terms "transfer" or "possessory interest" have the same meaning in the rest of § 5401(4) as they have in paragraph b. of that subdivision. In any event, other portions of § 5401 are beyond the scope of this ruling.

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Director of Revenue