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Transfer tax imposed on entities that own real property

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& King

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We all know that when real property is conveyed in New York State, transfer tax is due. Transfer tax is also imposed on transfers of interests in entities that own real property, even if the property isn't conveyed.

New York State taxes conveyances of real property or interests therein. A conveyance includes the transfer of a controlling interest in an entity with an interest in real property. An interest in real property covers fee and leasehold interests, development rights, air space/rights, options or contracts to purchase or any other interest with the right to use, occupy or receive rents, profits or other income.

A controlling interest is transferred (1) for a corporation, when a person or group of persons acting in concert conveys

50% or more of the corporation's voting stock or (2) for a partnership, association, trust or other entity, when a person or group of persons acting in concert conveys 50% or more of the capital, profits or beneficial interest. Persons act in concert when one person influences or controls the actions of another or when the negotiations and/or closing process indicates they are acting as a single entity. If transfers are completely independent, with each grantor selling without regard to the identity of the other grantors or grantees, the transfers are viewed as separate transfers.

Transfers after July 1, 1989 are added together to determine if a transfer of a controlling interest has occurred. Transfers will not be added together, however, if they occur more than 3 years apart unless they were timed

that way to avoid transfer tax.

There is an exemption from transfer tax for conveyances that result in a mere change of identity or form of ownership/organization where there is no change in beneficial ownership. To the extent there is a change in identity, that percentage is taxed.

Transfer tax is computed based on the consideration for the transfer. For a transfer of a controlling interest in an entity that owns real property, consideration is the fair market value of the property, apportioned based on the percentage of ownership interest transferred. Transfer tax must be paid by the grantor, but if the grantor fails to pay within the time required, the grantee must pay the tax.

A transfer tax return (TP-584 form) must be filed for each conveyance whether or not tax is due. If a conveyance instrument

is recorded, the return must be filed with the county clerk and the tax paid when the instrument is recorded. If the conveyance instrument is not recorded, the return must be filed with the State Department of Taxation and Finance (Department) and the tax paid within 15 days after the instrument is delivered (presumed to be the instrument's date).

If a return is not filed or is incorrect/insufficient, the Department will determine the tax from obtainable information, including the property's assessed value. No additional tax may be assessed more than 3 years from the date of filing a return. If a return isn't filed or is willfully false or fraudulent, the tax may be assessed at any time.

Although a document transferring an interest in an entity that owns real estate is likely not to be recorded in New York State, a transfer tax return must still be filed and any tax due must be paid.

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