

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

TSB-A-92(6)-R  
Real Property  
Transfer Gains Tax  
October 5, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M910611B

On June 11, 1991, a Petition for Advisory Opinion was received from Olympia and York (U.S.) Holdings Company, 237 Park Avenue, New York, New York 10017.

The issue raised by Petitioner, Olympia and York (U.S.) Holdings Company, is whether it and its affiliates and successors in interest may retain solely on microfilm (including microfiche, optical disk, and similar media) documentation of expenditures includible in the "original purchase price" of real property for purposes of the Real Property Transfer Gains Tax (hereinafter the "gains tax").

Petitioner owns numerous interests in real property within the State of New York. Many of these interests include properties constructed by Petitioner. Particularly in connection with construction activities, Petitioner's records contain numerous vendors' and contractors' invoices, purchase orders, and similar documents. In the course of their activities, Petitioner also maintains voluminous books of account.

Section 1447.1(b) of the Tax Law provides as follows:

(b) On the form prescribed for a transferor, the transferor shall set forth the following information: the original purchase price including the consideration paid by the transferor for any capital improvements made to such property, the party or parties to whom such original purchase price was paid, the consideration to be paid by the transferee, the amount of any brokerage fees to be paid and the party or parties to whom such fees will be paid and the anticipated tax due.

Form TP-580, Real Property Transfer Gains Tax Questionnaire-Transferor, sets forth that the transferor must submit a copy of the original closing statement and contract of sale pertaining to the original transfer or purchase to substantiate the original purchase price. If the closing statement does not exist, the transferor must submit other independent documentation to substantiate the consideration paid to acquire the property or interest therein, the date of the acquisition and the name and address of person to whom original purchase price was paid. Also, the transferor must submit a schedule giving a complete breakdown of all the allowable costs the transferor is claiming, including the date the expense was incurred, the names and addresses of the persons to whom payments were made, and the amount paid to each and the nature of the acquisition cost, capital improvement, and the selling expenses.

There are no specific gains tax regulations on recordkeeping. However, it is noted that Sections 50.1(3), (4), (5) and (6) of the Corporate Tax Procedure and Administration Regulations state as follows:

(3) Except as otherwise provided in subdivision (b)(8)(ii) of this section regarding Electronic Data Interchange (EDI) technology, every taxpayer must retain the records described in paragraph (2) of this subdivision, that are created or received in the ordinary course of business, in hardcopy form. This requirement may be met by retaining the actual hardcopy record or a copy on microfilm (including microfiche) provided the following requirements are met-

(i) All machine - sensible records, such as records retained on magnetic tape or magnetic disk generated by the taxpayer's ADP system and used in producing the records described in paragraph (2) of this subdivision, are retained;

(ii) The procedures governing the establishment of a microfilm system and the individuals who are responsible for maintaining and operating the microfilm system, with appropriate authorization from the Board of Directors, general partner(s), or owner, whichever is applicable, must be set forth in writing;

(iii) The microfilm system must be complete and must be used consistently in the regularly conducted activity of the business;

(iv) Procedures with appropriate documentation must be established so the original document can be followed through the micrographic system;

(v) Internal procedures for inspection and quality assurance must be established;

(vi) The taxpayer is responsible for the effective identification, processing, storage, and preservation of microfilm, making it readily available for as long as the contents may become material in the administration of article 9, 9-A, 13, 32, 33 or 33-A of the Tax Law;

(vii) A record must be kept of where, when, by whom, and on what equipment the microfilm was produced;

(viii) When displayed on a microfilm reader (viewer) or reproduced on paper, the material must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers;

(ix) A detailed index of all microfilmed data must be maintained and arranged in a manner that permits the immediate location of any particular record; and

(x) The taxpayer must make available upon request a reader/printer in good working order at the examination site for reading, locating and reproducing any record maintained on microfilm.

(4) Every taxpayer should make periodic checks on all records being retained for use by the Department of Taxation and Finance. If any records required to be retained are subsequently lost, destroyed, damaged, or found to be incomplete or materially inaccurate, the taxpayer must re-create the files within a reasonable period of time.

(5) Every taxpayer must make available to the Department of Taxation and Finance upon request any records described in this section, together with tax returns, including supporting schedules, filed with the Federal government, and supporting documents related thereto. Additionally, every taxpayer must provide the representative of such Department with suitable facilities for conducting an audit or examination.

(6) The Commissioner of Taxation and Finance may enter into an agreement with a taxpayer to modify or waive any or all of the specific requirements of this section if hardship is shown in an application filed pursuant to this paragraph and the recordkeeping under such agreement permits the taxpayer and the Department to accurately determine the taxpayer's tax liability. Such taxpayer remains subject to all requirements of this section that are not specifically modified or waived by such agreement. A request for modification or waiver shall be in writing and must be filed at least 90 days before the beginning of the taxable year for which such modification or waiver is requested. In determining whether hardship has been shown, the principal factor to be taken into account will be the amount by which the cost of recordkeeping in accordance with this section exceeds the cost of recordkeeping employed or proposed to be employed by the taxpayer. Additional factors to be considered include, but are not limited to: the presence of a pre-existing agreement between the taxpayer and the Internal Revenue Service regarding record retention for Federal income tax purposes and any unusual circumstances. If the Commissioner grants a modification or waiver, the Commissioner shall specify the period of time to which it applies and shall also prescribe the method of recordkeeping to be utilized.

It is not unreasonable for similar standards of record keeping to be applied to the administration of the gains tax statute. Accordingly, if Petitioner maintains its records in conformity with the methods as outlined in Sections 50.1(3), (4), (5) and (6) of the Corporation Tax Procedure

TSB-A-92(6)-R  
Real Property  
Transfer Gains Tax  
October 5, 1992

and Administration Regulations, such records will be considered to have met for gains tax purposes the record retention requirements required by Section 1447.1(b) of the Tax Law and by Form TP-580, Real Property Transfer Gains Tax Questionnaire-Transferor.

DATED: October 5, 1992

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth therein.