



Department of Taxation and Finance

Important

The real property transfer gains tax was repealed for transfers of real property that occur on or after June 15, 1996.

The information in this TSB-M is out-of-date and is provided only for historical purposes.

For additional information concerning the repeal of the tax, see [TSB-M-96\(4\)R](#).

The TSB-M begins on page 2 below.

Safe Harbor Estimate for Transfers
Pursuant to Condominium and Cooperative Plans

In conjunction with implementation of the new Gains Tax filing procedure for transfers pursuant to cooperative and condominium plans the Department is establishing standards for estimating the consideration to be received on all such plans. The standards are called the "Safe Harbor Estimates."

Application of Safe Harbor Estimates

As set forth in the "Instructions for Completing the Real Property Transfer Gains Tax Questionnaire for Cooperatives and Condominiums (Form DTF-701 and Form DTF-702)" each transferor of shares pursuant to a cooperative plan or units pursuant to condominium plan (both such shares and units will hereinafter be referred to as units) will be required to estimate the consideration that he will receive pursuant to the plan. This estimate of consideration on the entire plan ("Plan Consideration") will be made on the initial Gains Tax submission for the plan and at each required update point of the plan. On each of these submissions one component of the Plan Consideration will be an estimate of the consideration to be received on the units offered pursuant to the condominium or cooperative plan that are not sold or not contracted for at that point ("Unsold Units"). The Safe Harbor Estimates will provide a method for calculating this, and only this, component of the Plan Consideration. The other components of the Plan Consideration (e.g. the actual consideration received on sold units and the mortgage indebtedness) will be calculated as set forth at Section III of the Instructions (Computation of Consideration).

Calculation of the Safe Harbor Estimates

The Safe Harbor Estimate applicable to any cooperative or condominium plan will depend on the plan's status as:

- 1) newly constructed and vacant,
- 2) an eviction conversion plan, or
- 3) a non-eviction conversion plan.

Newly Constructed and Vacant

Initial Submission

On the initial submission, the Safe Harbor Estimate for a newly constructed and vacant condominium or cooperative will be 100% of the total of the offering plan prices for the Unsold Units.

The offering plan prices will be those established for purchasers as of the date the initial Gains Tax submission is filed, or at the date the submission is prepared, if within a reasonable time of the filing date. The number of Unsold Units will be determined at the same date used to determine the offering plan prices.

Update Submissions

At any required update point, the Safe Harbor Estimate for a newly constructed and vacant condominium or cooperative will be 100% of the offering plan prices for the remaining Unsold Units. The offering plan prices will be those established for purchasers as of the date the update submission is filed or at the date the update is prepared, if within a reasonable time of the filing date. The number of Unsold Units will be determined at the same date used to determine the offering plan prices.

Eviction Conversion Plan

Initial Submission

On the initial submission, the Safe Harbor Estimate for an eviction conversion plan will be 100% of the total of the offering plan prices established for tenants in occupancy ("insiders") for the Unsold Units. The offering plan prices will be those established for insiders as of the date the initial Gains Tax submission is filed, or at the date the submission is prepared, if within a reasonable time of the filing date. The number of Unsold Units will be determined at the same date used to determine the offering plan prices.

Update Submissions

At any required update point, the Safe Harbor Estimate for an eviction conversion plan will be 100% of the total of the insider offering plan prices for the remaining Unsold Units. The insider offering plan prices will be the same prices used on the initial submission. However, if the insider offering plan prices are changed after the date of preparation of the initial Gains Tax submission and prior to the initial closing, then the update submissions may use the later insider offering plan prices.

The number of Unsold Units will be determined as of the date the update submission is filed, or at the date the submission is prepared, if within a reasonable time of the filing date.

Non-eviction Conversion Plan

Initial Submission

The Safe Harbor Estimate for a non-eviction conversion plan will be calculated by taking the lower of

a) 100% of the total of the offering plan prices established for insiders for the Unsold Units,
or

b) 50% of the total of the vacant market value for the Unsold Units. Vacant market value will be established based on the price of vacant units transferred at the initial closing. If there are insufficient contracts for vacant units to establish vacant market value, or if circumstances indicate that the vacant units are not being transferred at market value, than the transferor must use 100% of the insider offering plan price to calculate his Safe Harbor Estimate under (a) above.

The insider offering plan prices will be those established as of the date the initial Gains Tax submission is filed, or the date the submission is prepared, if within a reasonable time of the filing date. The vacant market value and the number of Unsold Units will be determined at the same date.

Update Submissions

At any required update point the Safe Harbor Estimate for a non-eviction conversion plan will continue to be based on the insider offering plan prices or the vacant market value and the percentage of the total of these prices used on the initial submission. However, if the insider offering plan prices are changed after the date of preparation of the initial Gains Tax submission and prior to the initial closing, then the update submission may use the later insider offering plan prices. The number of Unsold Units will be determined as of the date the update submission is filed, or the date the update submission is prepared, if within a reasonable time of the filing date.

Effect of the Safe Harbor Estimate

A transferor who uses the appropriate Safe Harbor Estimate to estimate the consideration to be received on the Unsold Units will be treated, during the period that such transferor is holding Unsold Units to sell pursuant to the cooperative or condominium plan ("Sell Out Period"), as if he had estimated this consideration at the exact amount that is actually received on these units when sold. Accordingly, penalty and interest will not accrue against such a transferor for the underpayment of Gains Tax during the Sell Out Period, to the extent that such underpayment is the result of the excess of the actual consideration received on the sale of units over the Safe Harbor Estimate of consideration used for these units. Penalty and interest may accrue during the Sell Out Period, however, for the underpayment of Gains Tax resulting from the understatement of any other component of the Plan Consideration or the overstatement of original purchase price.

When a transferor has transferred all of his interest in the cooperative or condominium, his Sell Out Period has ended, the Safe Harbor Estimate will cease to have any further prospective application to such transferor. This means that such a transferor will owe Gains Tax based on the

actual consideration received pursuant to the plan and that such total tax will be due from the date the transferor transferred the last of his interest in the cooperative or condominium plan. Penalty and interest may accrue against such a transferor from such date for an underpayment of tax resulting from the excess of the actual consideration received under the plan over the Safe Harbor Estimate of consideration.

Presumption that Sell Out Period has Ended

The unqualified application of the rule stated above, that the Safe Harbor Estimate applies until the transferor transfers all of his interest in the cooperative or condominium plan, would raise the possibility that a transferor would refrain from selling the last unit in a plan to evade payment of the tax due based on actual consideration received pursuant to the plan. To eliminate this potential for abuse, a transferor will be treated as if his Sell Out Period has ended, although he still holds Unsold Units, under the following circumstances.

In the case of a plan offering newly constructed and vacant property, or a non-eviction conversion plan, if the transferor has transferred 85% or more of his interest in the cooperative or condominium, and more than 1 year has passed since such transferor transferred a unit in the cooperative or condominium, then on the date that both of these conditions are met a presumption will arise that the transferor's Sell Out Period has ended.

In the case of an eviction conversion plan, if the transferor has transferred 85% or more of his interest in the cooperative or condominium, more than 3 years have passed since the plan was declared effective, and more than 1 year has passed since the transferor has transferred a unit in the cooperative or condominium, then on the date that all of these conditions are met a presumption will arise that the transferor's Sell Out Period has ended.

In each of the above cases the presumption will operate to treat the transferor as if his Sell Out Period had ended on the date the presumption arose. Accordingly, from such date the Safe Harbor Estimate will cease to have any further prospective application, the transferor will owe tax based on the actual consideration received on all the interest sold, and penalty and interest may accrue on such tax.

A transferor may rebut this presumption by demonstrating to the Department that he intends to continue selling units in the cooperative or condominium and that he did not refrain from selling units in order to evade paying Gains Tax on the actual consideration received on his prior transfers of units. A transferor who makes this demonstration to the Department will rebut the presumption

retroactively to the date it arose and will benefit from the uninterrupted application of the Safe Harbor Estimate.

Effective Date

Effective on the date that the new Gains Tax filing procedure for transfers pursuant to cooperative and condominium plans is implemented, the Safe Harbor Estimate will be an election available to any transferor to estimate consideration for Unsold Units on the initial Gains Tax Submission for a plan and at any required update point of a plan. A transferor who elects not to use the Safe Harbor Estimate after such date may be assessed interest and penalty to the extent that his estimate of the consideration to be received on Unsold Units is less than the actual consideration received.

The establishment of the Safe Harbor Estimates is not intended to indicate that any estimate of consideration made before the new Gains Tax filing procedure is implemented was or was not reasonable.

Future Changes

The Department of Taxation and Finance reserves the right to change the formulation of the Safe Harbor Estimates based on its experience and on changing market conditions. Any such changes may apply to pending submissions but will only apply prospectively.