

November 5, 2008

<Name>
<Address>
<Address>
<City, State, Zip>

Formal Ruling 2008-01

Dear <Name>:

You have requested a ruling with respect to the determination of basis for purposes of Vermont's land gains tax.

The pertinent facts, as set forth in your letter of <Date> and attached filings, are as follows:

Your client, <Company> a <Business> authorized to do business in Vermont and operating a place of business in the Town of <Town>, Vermont, brought a Complaint for Foreclosure against <Name> and <Name> on <Date>, alleging default under the terms of a promissory note and mortgage deed executed in favor <Company>. <Company> simultaneously moved for public sale of the property. Judgment and Decree of Foreclosure was issued on <Date>. Defendants failed to redeem the foreclosed property and the property was offered for sale on <Date>. There were four bidders; the highest third party bid was \$100,000. <Company> believed the property was worth more than that amount and made the final bid in the amount of \$125,000. This is significantly less than the mortgage amount and the judgment amount (\$247,000.00 and \$251,920.13 respectively). Title transferred to <Company> pursuant to the Court's Order of Confirmation entered <date>. <Company> plans to list the property for sale at \$199,000.00.

A tax is imposed on the gains from the sale or exchange of land in Vermont. 32 V.S.A. § 10001. The taxable gain from the sale or exchange is the amount realized minus the basis of the land. 32 V.S.A. § 10005(c). The provisions of the Federal Internal Revenue Code shall determine the basis of land sold or exchanged "except for land transferred by a mortgagee who acquired the land by foreclosure or transfer in lieu of foreclosure shall be the amount of debt due the mortgagee increased by the costs of acquisition, and decreased by the amount of any tax benefit due to bad debt loss on the mortgage debt." Your question is whether this rule for determining the basis of a mortgagee applies when the mortgagee acquires the property at public auction a sale held pursuant to a decree of foreclosure.

In this situation, <Company> "acquired the land by foreclosure" within the meaning of 32 V.S.A. § 10005(a). Vermont law provides for both strict foreclosure and foreclosure by sale. In this case, because <Company> believed there may have been equity in the property, it moved for public sale. A strict foreclosure decree may not issue absent a finding that there is no value in the property in excess of the mortgage debt and property taxes due. 12 V.S.A. § 4528. Section §10005(a) does not distinguish between strict

foreclosure and foreclosure by sale. Therefore, <Company>'s basis in the property is equal to the debt due together with costs of acquisition less the amount of any tax benefit due to bad debt loss on the mortgage debt.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletion is attached, and you may request that within thirty (30) days the Commissioner delete any further information that might identify the interested parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the requester and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

Section 808 of Title 3 provides that this ruling will have the same status as an agency decision or an order in a contested case. You have the right to appeal this ruling within thirty days.

Sincerely,

Molly Bachman
General Counsel

Approved this ____ day of _____, 2008.

Tom Pelham
Commissioner of Taxes