

Ruling 93-07

Vermont Department of Taxes

Date: May 10, 1993

Written By: Danforth Cardozo, III, Attorney for the Department

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont's property transfer tax law on a proposed long term lease of land by the [Corporation] ("Taxpayer"). This ruling relies upon the representations contained in your letter of November 17, 1992 to Henry Ferry of the Tax Department.

The facts are as follows: The Taxpayer will be leasing [land] from [Corporation] for a 41 year period at an annual rent of \$1.00. The Taxpayer will construct and own [number of units] apartment units to house [Corporation] [employees]. At the end of the lease-hold all buildings and improvements revert to [Corporation] without consideration.

The Taxpayer does not have an option to purchase the land during the lease term. However, the Taxpayer does have what is denominated in the proposed lease a "right of first refusal" and "right to purchase", which would allow the Taxpayer to match any bona fide offer that [Corporation] might receive for the purchase of the land during the Taxpayer's leasehold period.

The Vermont property transfer tax is imposed upon the transfer by deed of title to property located within this state. 32 V.S.A. § 9602. The amount of tax is one and one quarter percent of the value of the property transferred, subject to exceptions not relevant under the facts as described. Id.

The term "deed" "...includes any deed, instrument, memorandum of deed, memorandum of lease, or other writing evidencing a transfer of title to property." 32 V.S.A. § 9601(1).

The term "value" means "...the amount of the full actual consideration ...; in the case of a gift, or a transfer for nominal consideration, "value" means the fair market value of the property transferred...." 32 V.S.A. § 9601(6).

The term "title to property" includes: "those interests in property enduring for a fixed period less than 50 years if there is granted a right to purchase the property and there is granted the right to construct on the property a building or structure or to make such major capital improvements as water systems, sewer systems, roads, or parking facilities." 32 V.S.A. § 9601(3)(B)(iii).

A right of first refusal is defined as the "(r)ight to have first opportunity to purchase real estate when such becomes available, or right to meet any other offer." Black's Law Dictionary, 5th Ed. Under a right of first refusal, a party's right to purchase is inchoate; it may ripen into an absolute right should the present owner desire to sell and receive an offer to purchase.

The lease from [Corporation] to the Taxpayer fits the definition of a deed evidencing a transfer of title to property under 32 V.S.A. §§ 9601(1) and (3)(B)(iii) and is therefore subject to the property transfer tax. The lease is for less than 50 years, there is granted a right to purchase the property and there is granted a right to construct on the property a building or structure and major capital improvements.

Since the lease is for nominal consideration, the amount of tax is measured by the fair market value of the property which is the subject of the lease at the time the lease is entered into. 32 V.S.A. § 9601(6).

This ruling is issued solely to your firm 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.