

VERMONT DEPARTMENT OF TAXES  
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REG. §1.10001 STATUTORY PROVISIONS; TAX IMPOSED. [32 V.S.A. §10001]

Reg. §1.10001-1 (Effective 7/16/74) Regulatory Authority.

These regulations are promulgated pursuant to Section 10009(a) of Title 32, Vermont Statutes Annotated.

Reg. §1.10001-2 (Effective 7/16/74) Tax as Selling Expense.

The Land Gains Tax itself is a transfer tax for the purpose of the Federal Income Tax and is therefore a selling expense. Thus, in determining Federal Income Tax the Land Gains Tax will be a deduction against ordinary income or will reduce amount realized depending on whether the seller is in the business of selling land, an investor in land or whether he is in some other category. However, in determining the amount of gain for the purpose of the Land Gains Tax, this tax itself cannot reduce the amount realized.

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REG. §1.10004 STATUTORY PROVISIONS; SALE OR EXCHANGE.  
[32 V.S.A. §10004]

Reg. §1.10004(a)-1 (Effective 7/16/74) Transfers Not Subject to the Tax.

Transfers not subject to the tax include gifts, transfers by reason of death, distributions (as opposed to sales or satisfaction of a cash legacy with land) from estates, transfers merely to correct deeds, and straw transfers where there is no consideration because, while there is a transfer of title, there is no consideration. In these cases, there is no requirement that any forms be filed under the Land Gains Tax or that any withholding be made by the buyer or that any tax be paid by the seller. However, the Property Transfer Tax Return should indicate the type of transaction in cases where property so transferred has been held less than six years by the transferor.

Reg. §1.10004(a)-2 (Effective 7/16/74) Leases.

Leases are not subject to the Land Gains Tax. However, a 99 year or longer lease will be treated as a transfer of fee interest, as will perpetual leases, and will be subject to the Land Gains Tax.

Reg. §1.10004(a)-3 (Effective 7/16/74) Mineral Rights, Timber Rights, Flowage Rights.

A sale of mineral rights or timber rights for a limited period of time is not a transaction which is subject to this tax. However, the sale of flowage rights is subject to this tax.

Reg. §1.10004(a)-4 (Effective 7/16/74) Gravel, Soil, Cut Timber

Sales of gravel, soil, cut timber, and similar items are not subject to this tax.

Reg. §1.10004(a)-5 (Effective 7/16/74) Governmental Sales.

Sales by the United States or its instrumentalities are not subject to this tax; however, sales by the State of Vermont and its instrumentalities are subject to the tax.

Reg. §1.10004(a)-6 (Effective 7/16/74) Partition.

In the case where common owners are simply receiving a specific area quantity portion of property for no consideration through partition, such a transfer is not subject to this tax.

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REG. §1.10005 STATUTORY PROVISIONS; BASIS, GAIN AND HOLDING PERIOD. [32 V.S.A. §10005]

Reg. §1.10005(a)-1 (Effective 7/16/74) Basis.

Basis is determined under the Internal Revenue Code rules and is the initial cost plus improvements to the land such as putting in roads, sidewalks, sewer systems, water system, etc.

Reg. §1.10005(a)-2 (Effective 7/16/74) Improvements Not Yet Completed.

In the event that sales of lots reflect in the sales price the cost of improvements which have not yet been completed, a projection (as made for Federal Income Tax purposes) of those costs allowable can be made for purposes of determining gain.

Reg. §1.10005(a)-3 (Effective 7/16/74) Basis of Property Acquired By Reason of Death.

Land acquired by reason of death will have a basis equal to fair market value at date of death unless the alternate valuation date is used by the estate, in which case that valuation will constitute the basis for that property.

Reg. §1.10005(a)-4 (Effective 7/16/74) Capitalized Expenses.

If Section 266 of the Internal Revenue Code is used by the seller for Federal Income Tax purposes, he may increase his basis by those expenses attributable to land which he capitalized under Section 266.

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Reg. §1.10005(b)-1(a) (Effective 7/16/74) Selling Expenses.

In determining gain for the purposes of the Vermont Land Gains Tax, the Internal Revenue Code rules for computing amount realized are to be used. In determining the amount realized, the gross consideration paid to the seller is to be reduced by those selling expenses which are capital in nature and which are directly connected with the sale of a particular parcel. Thus, legal fees, surveying costs, sales commissions and the like actually paid to the extent directly related to the sale of a particular parcel, can reduce the amount realized.

Reg. §1.10005(b)-1(b) (Effective 7/16/74) Allocation of Expenses.

In the normal calculation of the tax, gross consideration for both buildings and land is reduced by allowable selling expenses attributable to both buildings and land; the resulting amount is then allocated between buildings and land. Thus, no direct allocation of selling expenses between land and buildings is necessary.

Reg. §1.10005(b)-1(c) (Effective 7/16/74) Allocation on Fair Market Basis.

If, in a sale of buildings and land, the gross consideration attributable to land is the starting point of the calculation, selling expenses must be allocated between land and buildings on a fair market value basis.

Reg. §1.10005(b)-2(a) (Effective 7/16/74) Divorces.

The rules for the purpose of this tax with respect to divorces is that if there is a gain for Federal Income Tax purposes, there is a gain under the Land Gains Tax.

Reg. §1.10005(b)-2(b) (Effective 7/16/74) Jointly Owned Property.

Where there is a division of jointly owned property pursuant to 15 V.S.A. §751, the Land Gains Tax is not applicable and both basis and holding period relate back to the original acquisition.

Reg. §1.10005(b)-2(c) (Effective 7/16/74) Court Award in Lieu of Alimony.

Where a court pursuant to 15 V.S.A. §754 awards one spouse a portion of the other spouse's real property in lieu of

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alimony, there is a sale or exchange for purposes of Land Gains Tax.

Reg. §1.10005(b)-3(a) (Effective 7/16/74) Allocation.

In the event that buildings and land are sold or that a principal residence and more than 5 acres (up to 10 acres if local residential zoning ordinances so require) are sold, allocation must be made on a fair market value basis.

Reg. §1.10005(b)-3(b) (Effective 7/16/74) Condominiums.

In the case of a sale of a condominium unit, the undivided land interest will be subject to the tax providing there is a gain on the sale.

Reg. §1.10005(b)-4(a) (Effective 7/16/74) Foreclosures.

With respect to foreclosures or voluntary conveyances, in almost all cases there will be a loss to the seller (the defaulting buyer). There is no doubt that there is a transfer of title for consideration but because in almost all, if not all, cases the transaction will result in a loss to the seller (the defaulting buyer), and because there are a number of these situations, no returns will be required, no withholding will be required, and no tax will be due.

Reg. §1.10005(b)-4(b) (Effective 7/16/74) Gain on Foreclosure.

In the rare case where there is gain to the seller (mortgagor) in a foreclosure proceeding or a voluntary conveyance, of course, the tax should be paid, returns filed and money withheld by the buyer (mortgagee) and paid over to the Department of Taxes.

Reg. §1.10005(b)-4(c) (Effective 7/16/74) Basis and Holding Period.

In the event of a foreclosure or voluntary conveyance, a new basis and holding period will result unless Sec. 1038 of the Internal Revenue Code is applicable.



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Reg. §1.10005(c)-1 (Effective 7/16/74) Exemptions.

The nonrecognition provisions in the Internal Revenue Code dealing with the sale or exchange of capital assets which apply to this tax include Sections 332, 333, 337, 351, 361, 721, 731, 1031, 1032, 1033, 1034 and 1038, and are applicable to the Land Gains Tax only to the extent to which there is actual nonrecognition of gain under the Internal Revenue Code with respect to each particular transaction.

Reg. §1.10005(c)-2 (Effective 7/16/74) Nonrecognition Under §§1033, 1034.

Where nonrecognition is provided under Section 1034 of the Internal Revenue Code, the Land Gains Tax must be paid at the time of the transfer and a claim for refund made by the taxpayer when he has determined what his nonrecognition is, if any, with interest at 6% per annum, unless the reinvestment under Section 1034 precedes the sale, in which case the recognized gain will be known; then the exact amount of tax, if any, should be paid. The same treatment shall apply to conversions under Section 1033 into similar property.

Reg. §1.10005(c)-3 (Effective 7/16/74) Investment in Non-Vermont Land.

Where nonrecognition is granted under sections 1031 and 1033 of the Internal Revenue Code, the nonrecognition granted by the Internal Revenue Code will not apply in instances where Vermont land is exchanged for non-Vermont land or where proceeds of sale or conversion are used to invest in non-Vermont land.

Reg. §1.10005(c)-4 (Effective 7/16/74) Sale of Land Without Dwelling.

There is a specific exemption for five acres (up to 10 acres if local zoning ordinances so require for residential purposes) necessary for use of a dwelling used by the seller as his principal residence; however, if a portion of that otherwise exempt property should be sold without the house, that portion sold would not be necessary for use as a dwelling and would not qualify for exemption.

Reg. §1.10005(c)-4(a) (Effective 7/16/74) Seller's Principal Residence Exemption.

The signing of the property transfer tax return itself will constitute a sworn statement that the residence is the principal residence of the seller when the box next to the appropriate statement on the property transfer return is checked.

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Reg. §1.10005(c)-4(b) (Effective 7/16/74) Multiple Use of a Building.

In the case of multiple use of a building, the percentage of the building used as a principal residence is the percentage of the otherwise exempt land which will be permitted exemption from this tax.

Reg. §1.10005(c)-4(c) (Effective 7/16/74) Principal Residence of Seller.

In the case of a principal residence, if the seller moves out of what was his principal residence to another principal residence and continually attempts to sell his former principal residence, the exemption for the five acres (up to 10 acres if local zoning ordinances so require for residential purposes) of land will apply so long as the former principal residence is not occupied. However, if the principal residence is converted into investment property by way of renting it out, the exemption does not apply unless the taxpayer can show with respect to the particular facts of his case whether that the particular arrangement did not constitute a true conversion to investment property or was of such a nature that the principal residence could be sold as soon as a willing buyer was found.

Reg. §1.10005(c)-4(d) (Effective 7/16/74) Principal Residence of Decedent.

In the event that the principal residence of a decedent is sold by the decedent's estate or his heir, the principal residence exemption does not apply because that exemption runs to the taxpayer who is the seller and in this case the residence would not be the principal residence of the estate.

Reg. §1.10005(c)-5 (Effective 7/16/74) Exempt Organizations.

Organizations exempt from Federal income tax are subject to the land gains tax.

Reg. §1.10005(c)-6 (Effective 7/16/74) Development Corporations and Local Development Corporations.

Land owned by a development corporation or local development corporation as defined in Title 10, section 242(4) and section 302(4) is exempt from the land gains tax.

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Reg. §1.10005(c)-7 (Effective 7/16/74) Principal Residency of Buyer.

A further exemption exists for the seller when the buyer certifies to the Commissioner of Taxes that he is domiciled in Vermont or will be in 60 days, that the dwelling to be purchased will be used as his principal residence, and that he understands that as a Vermont domiciliary all of his income is subject to the Vermont income tax laws.

Reg. §1.10005(c)-7(a) (Effective 7/16/74) Purchases of Raw Land.

Further, with respect to purchases of raw land, the purchaser must further certify that he will commence construction of his principal residence within one year from date of transfer and that he will complete construction and occupy the home within two years from date of transfer. The deed or other transfer instrument must state that the amount of the tax of which the seller has been relieved is a lien running on the land in the favor of the State of Vermont until the tax has been paid or the purchaser has filed a statement with the Department of Taxes that the dwelling has been constructed and occupied within the conditions previously certified.

Reg. §1.10005(c)-7(b) (Effective 7/16/74) Extensions of Time.

Should the buyer find that for reasons beyond his control the construction cannot meet the conditions certified, he should apply for an extension of time from the Commissioner of Taxes. Such extensions will be granted only for unavoidable delays in the most extreme cases.

Reg. §1.10005(c)-7(c) (Effective 7/16/74) Buyer Liable for Tax.

In the event conditions are not met or the certification was untrue, the buyer is liable for the tax.

Reg. § 1.10005(c)-7(d) (Effective 7/16/74) Acreage Limitations.

The same acreage limitations apply as apply to the seller.

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Reg. §1.10005(d)-1 (Effective (7/16/74) Holding Period.

The holding period for the purpose of this tax follows the holding period rules in the Internal Revenue Code, including "tacking". Tacking under the Internal Revenue Code normally occurs when there is a sale or exchange in which nonrecognition of gain is permitted and the basis is either a carry-over basis or a substituted basis. Thus, in the case of a gift, the holding period of the donor is added on to the holding period of the donee who may eventually sell the property. Likewise, in the case of a tax-free incorporation under Section 351 of the Internal Revenue Code, the corporation will be able to add on to its holding period the holding period of the transferor of the property. Also, transactions subject to Section 1034 of the Internal Revenue Code may involve tacking (see Section 1223(7) of the Internal Revenue Code).

When tacking is used, the inclusion of the holding period of any person other than the seller or exchanger cannot exceed the time for which such person held actual and recorded title to the land in his own name.

Reg. §1.10005(d)-2 (Effective 7/16/74) Holding Period of Property Acquired By Reason of Death.

Where a taxpayer takes property by reason of death, the holding period will begin at date of death of the decedent as under the Internal Revenue Code. See 26 USC § 1014 and 26 CFR 1.1014-4(a)(2). However, where there is a tenancy by the entirety, death of one of the spouses shall not create a new holding period; the holding period shall be from the date of the creation of the tenancy by the entirety to the date of transfer irrespective of the death of one of the spouses and including any period where the property was held by one spouse before the creation of the tenancy by the entirety.

Reg. §1.10005(d)-2(a) (Effective 7/16/74) Cash Legacy Discharged With Land.

When a cash legacy is discharged with land, the holding period of the legatee begins at the time of distribution of the land.

Reg. §1.10005(d)-3 (Effective 7/16/74) Tenancy By the Entirety.

In the case of a tenancy by the entirety where a spouse owns the property in his or her name and then creates such a tenancy, the period in which the spouse held it in his or

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her name can be added to the period in which the property was owned as tenants by the entirety. The converse is also true; that is, when a tenancy by the entirety is dissolved other than by reason of death or transfer for consideration, the holding period during the period of the tenancy will be added to the holding period of the spouse owning that property in his or her own name.

Reg. §1.10005(d)-4 (Effective 7/16/74) Liquidation Under §333

In the case of a liquidation under Section 333 of the Internal Revenue Code, the holding period by the distributee of land from the corporation will be the shorter of the distributee's ownership of stock in the corporation or the corporation's ownership of the land.

Reg. §1.10005(d)-5 (Effective 7/16/74) Partition.

In the case of partition when there is no consideration, the holding period runs from the date of joint ownership.

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REG. §1.10006 STATUTORY PROVISIONS; LIABILITY FOR TAX.  
[32 V.S.A. §10006]

Reg. §1.10006-1 (Effective 7/16/74) Persons Liable for the Tax.

The seller is liable for the payment of the Vermont land gains tax. The buyer is liable for withholding 10% of the consideration attributable to the land which he pays to the seller, and will also be liable for the Land Gains Tax itself in the event he fails to comply with the conditions for exemption represented to the seller under 32 V.S.A. §10002.

Reg. §1.10006-2 (Effective 7/16/74) Subchapter S Corporations and Partnerships.

In the event that the seller is a subchapter "s" corporation operating under § 1371, et seq., of the Internal Revenue Code, the corporation itself is taxable. In the event that the seller is a partnership, the partnership itself is liable for the tax.

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REG. §1.10007 STATUTORY PROVISIONS; WITHHOLDING AT SOURCE;  
PAYMENT. [32 V.S.A. §10007]

Reg. §1.10007-1 (Effective 06/30/76) Filing.

Even though there may be no ultimate tax liability and no withholding liability, there must be filing of withholding returns and land gains returns in every case where there is a transfer of property for consideration held for less than six years. The exceptions to this general rule are:

- (a) sales of perpetual easements for \$1.00 or less;
- (b) foreclosures and voluntary conveyances in lieu of foreclosures where there is no gain;
- (c) sales of land owned by development corporations or local development corporations as defined in Title 10, section 252(4) and section 302(4);
- (d) sales of up to five acres (up to 10 acres if local residential zoning ordinances so require) necessary for use of a dwelling used by the seller as his principal residence;
- (e) sales to the State of Vermont by an organization qualifying under section 501(c)(3) of the Internal Revenue Code.

IN THE CASE OF A SALE INVOLVING AN EXEMPTION BASED ON THE BUYER'S STATED INTENT 1) TO MAKE THE PROPERTY HIS PRINCIPAL RESIDENCE, 2) TO PURCHASE LAND DIRECTLY CONTIGUOUS TO HIS PRINCIPAL RESIDENCE, OR 3) TO BUILD A HOUSE WHICH WILL BE THE PRINCIPAL RESIDENCE OF THE OCCUPANT ON THE NEXT SUCCEEDING SALE, FULLY COMPLETED RETURNS (LAND GAINS AND WITHHOLDING) MUST BE FILED BY BOTH SELLER AND BUYER.

Reg. §1.10007-1(b) (Effective 06/30/76) No Filing Required.

No filing is required in the case of gifts, transfers by reason of death, distributions (as opposed to sales) from estates, straw transactions when there is no consideration, and transfers merely to correct deeds.

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Reg. §1.10007-2(a) (Effective 7/16/74) Withholding by the Buyer.

The buyer is required to withhold 10% of the consideration paid to the seller. This amount is to be paid by the buyer to the Department of Taxes. In the case of a sale of land and buildings, the 10% withholding is to be on that consideration attributable to the land. In no event is this amount to be held by the attorney for either buyer or seller.

Reg. §1.10007-2(b) (Effective 7/16/74) Buyer Liable For Withholding.

If a buyer withholds 10% but does not remit it to the Department, the Department will not hold the seller responsible for any tax due because of the failure of the buyer to remit the withheld monies to the Department and will seek relief directly against the buyer.

Reg. §1.10007-2(c) (Effective 7/16/74) No Withholding Required For Property Held Six Years or More.

When there is a transfer of title for consideration, withholding must be made whether or not there is any ultimate tax liability upon the seller. However, withholding can be avoided generally in two ways and in one instance it is not required at all. In the case of property held six years or more, no withholding is required, no filing is required and no tax is due; however, the statement on the Property Transfer Return regarding holding period is required.

Reg. §1.10007-2(d) (Effective 7/16/74) Advance Certificates.

If advance certificates are received from the Department as prescribed in Section 10007(c) of the law, withholding is not required.

Reg. §1.10007-2(e) (Effective 7/16/74) Simultaneous Filing.

If simultaneous filing is made by buyer and seller, the exact amount of the tax as shown on the Land Gains Tax return should be paid and no withholding is necessary. But if a deficiency is determined to exist, the buyer will be liable to the extent of 10% of the consideration.

Reg. §1.10007-2(f) (Effective 7/16/74) Principal Residence of Seller.

In no case where there is a sale of a principal residence of the seller with five acres (up to 10 acres if local



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residential zoning ordinances so require) or less necessary for use as a dwelling of the seller will withholding be required by the buyer, nor will a withholding return be required. However, if there is more than the exempt acreage sold with such principal residence, the general withholding and filing rules apply. See Reg. Sec. 1.10007-1 regarding filing when purchaser claims exemption.

Reg. §1.10007-2(g) (Effective 7/16/74) Reliance on Certification.

In the event that an advance certificate has been obtained by the seller, the buyer is entitled to rely entirely on that certification and will not be held liable in the future for any withholding with respect to that particular transaction.

Reg. §1.10007-2(h) (Effective 7/16/74) Conditional Certifications.

The advance certification procedure assumes that the tax will be paid at the time the certification is received. However, in some cases it will be necessary to grant conditional certification in order to permit a seller to consummate a sale. Such conditional certifications will be granted, the condition being that the buyer withhold the exact amount of tax indicated on the conditional certification.

Reg. §1.10007-2(i) (Effective 7/16/74) Sales by United States.

Sales by the United States or its instrumentalities will require no withholding, but a withholding return must be filed for transfers of property held less than six years.

Reg. §1.10007-2(j) (Effective 7/16/74) No Withholding or Filing Required.

See Regulation Section 1.10007-1 for cases where neither withholding nor filing is required.

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Reg. §1.10007-3(a) (Effective 06/30/76) Liens.

A lien against the buyer or seller does not arise by operation of law except with respect to transactions involving exemption because of the buyer's representation to the seller of intent either to make the property his principal residence or to build a house which will be the principal residence of the occupant on the next succeeding sale, as referred to below in Regulation No. 1.10007-3(b). The Department of Taxes must notify the buyer or seller of a tax due or actually assess the buyer or seller before the lien arises. Then in order to protect the State's interests, the Department of Taxes must file a lien in the appropriate town land records.

Reg. §1.10007-3(b) (Effective 06/30/76) Lien on Raw Land.

In the event that the seller sells or exchanges raw land and claims an exemption based on the buyer's representation that he intends either to construct his principal residence on the land, or to build a house which will be the principal residence of the occupant on the next succeeding sale, the lien against the buyer will arise by operation of law. Since the deed will indicate that the land gains tax in such a case is a lien running with the land, no further filing will be made by the Department until the tax becomes delinquent.

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Reg §1.10008 STATUTORY PROVISIONS; INSTALLMENT SALES. [32  
V.S.A. §10008]

Reg. §1.10008-1 (Effective 7/16/74) Installment Sales Reporting.

Installment sales reporting is not permitted unless the total Land Gains Tax liability exceeds \$2,000. In the case of installment sales, if the buyer, seller, and the Department of Taxes agree, the buyer may withhold the exact amount of tax due with respect to payments made after the initial payment.

Reg. §1.10008-2 (Effective 7/16/74) Leases With Options to Purchase.

Leases with options to purchase are treated as installment sales if any portion of the rent is to be applied against the purchase price. Thus, withholding will be required when rental payments are made. A lease with an option to buy in which none of the rent is applied against the purchase price will not constitute an installment sale for the purposes of this tax.

Reg. §1.10008-3 (Effective 7/16/74) Seller Takes Back Mortgage.

If a seller takes back the mortgage, such a transaction will be treated as an installment sale for purposes of this tax. If a seller takes back a mortgage and then makes a disposition of the note, the balance of the tax becomes due from the seller at that time.

Reg. §1.10008-4 (Effective 7/16/74) Quarterly Withholding.

In cases where installment payments are made on a monthly basis, the buyer should withhold and remit taxes to the Department on a quarterly basis.

Reg. §1.10008-5 (Effective 7/16/74) Amount Due on Each Installment.

The amount of taxes due on each separate installment, including the first installment, shall bear the same proportion to the total amount of taxes due as the amount of that installment bears to the total consideration.

Vermont Department of Taxes

LAND GAINS TAX REGULATIONS

Reg. §1.10008-6 (Effective 7/16/74) Filing.

Seller must file returns within 30 days of each payment to the Department by the buyer. Seller may elect to file once a year, for years after year of sale, by April 15 on a Land Gains form. Such an election must be filed with this Department at the time when the first Land Gains Tax return is filed.