



Ontario

Ministry of  
Consumer and  
Commercial  
Relations

Property  
Rights  
Division

Easements

Agreement of  
Purchase and  
Sale and Options

BULLETIN NO. 75080

DATE: SEPT. 18, 1975.

TO:  
ALL LAND REGISTRARS

THE LAND TRANSFER TAX ACT, 1974

INTERPRETATION BULLETIN

Please be advised of the following rulings under The Land Transfer Tax Act:

Note : Reference will be made, where applicable, to Regulation 504/74 (filed July 4, 1974) which appears at the end of this Bulletin.

1. A grant of easement or right of way is a taxable conveyance and tax must be paid on the value of consideration, if any.

Note : Ontario Regulation 749/74 filed October 1, 1974, which appears at the end of this bulletin, provides that an easement or right of way conveyed to a pipeline company, as defined in section 1 of the Regulation, for the purpose of enabling the pipeline company to construct and operate a pipeline for the transportation of oil, gas or other liquid gaseous hydro carbons and products is a class of conveyance to which The Land Transfer Tax Act was not intended to apply. Accordingly, every person tendering for registration any such conveyance is exempt from the tax imposed by the said Act.

2. An agreement of purchase and sale and an option for the purchase of land are taxable conveyances. The value of consideration with respect to an agreement of purchase and sale is the full amount of consideration set out in the agreement. When the conveyance is subsequently completed, no additional tax will be payable, if section 6 of the land transfer tax affidavit states that tax was paid when the agreement of purchase and sale was registered. The value of consideration on the registration of an option for the purchase of land is the amount of consideration paid by the optionee for the purchase of the option. See paragraph 3.

Notices and  
Cautions

3. The definition of conveyance includes "a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed". Accordingly, a notice of lease, a notice of an agreement of purchase and sale, a notice of an option to purchase and a caution based upon an agreement of purchase and sale or option to purchase are taxable conveyances.

Final Orders  
of Fore-  
closure and  
Vesting  
Orders

4. A final order of foreclosure or a vesting order is an exempt conveyance if the action was commenced prior to April 10, 1974. In this regard, a statutory declaration stating that the action was commenced prior to April 10, 1974 must be attached to and registered with the final order of foreclosure or vesting order. See section 1(1) of Regulation 504/74.

Testacy and  
Intestacy

5. A conveyance of land from the personal representative of a deceased person to the named or residuary devisee or devisees under the terms of the last will and testament of the deceased or to the beneficiaries entitled under the laws of intestacy is exempt from tax. Section 6 of the land transfer tax affidavit must state that the conveyance satisfies this condition in order to be exempt from the tax. A conveyance of land by the personal representative other than to

- (a) the named or residuary devisee or devisees under the will, or
- (b) the beneficiaries entitled under the laws of intestacy

is a taxable conveyance.

Natural Love  
and Affection -  
Inter-spousal  
Transfers

6. A conveyance where the whole of the consideration is based upon natural love and affection is exempt from tax. The previous ruling that the exemption applied only between spouses or between parent and child no longer applies. Accordingly, a conveyance where the whole of the consideration is based upon natural love and affection is exempt from tax notwithstanding that the parties to the conveyance are not related. Section 6 of the land transfer tax affidavit must state the relationship of the transferor and transferee (e.g. brother to sister, friend to friend).

However, if part of the consideration is the assumption of any outstanding encumbrances by the transferee, tax is payable on the amount assumed. If the transferor and transferee are husband and wife, tax is not payable upon the amount of the encumbrances assumed. In this

regard see Ontario Regulation 138/75, which appears at the end of this bulletin. This Regulation provides additional inter-spousal transfers which are exempt from the provisions of The Land Transfer Tax Act.

#### Trustees and Beneficiaries

7. A transfer of land between trustees or between the trustee and the cestui que trust (i.e. beneficiary) where there is no change in the beneficial ownership of land is an exempt conveyance. This exemption will require supporting evidence to be filed with the land transfer tax section of the Ministry of Revenue.

The Ministry of Revenue upon receiving the necessary evidence will endorse the conveyance as being exempt from tax. The Land Registrar cannot allow the exemption based upon section 6 of the land transfer tax affidavit being completed and stating that there has been no change in the beneficial ownership of the land. At the present time, this exemption can only be granted by the Ministry of Revenue. This matter is being given further consideration by this Branch and the Ministry of Revenue and may be subject to future modification.

#### Amalgamation and Pre-Incorporation Trusts

8. A conveyance of land pursuant to a statutory amalgamation or a conveyance of land from a trustee to a corporation (based upon a pre-incorporation trust) is exempt from tax. This exemption may be approved only by the Ministry of Revenue who will endorse such approval on the conveyance.

#### Winding Up

9. A conveyance of land to shareholders upon the winding up or dissolution of a corporation is exempt from tax. This exemption may only be approved by the Ministry of Revenue. See section 1(2) of Regulation 504/74.

#### Legal Tenure

10. A simple change in the form of legal tenure of land between the same parties, e.g. tenants-in-common to joint tenants or vice versa is an exempt conveyance. The Land Registrar may satisfy himself of this change in form of legal tenure by examining the instrument presented for registration.

#### Non-Resident Corporations

11. Section 2 of Regulation 504/74 allows Land Registrars, as collectors under The Land Transfer Tax Act, to exempt non-resident corporations from the 20% tax rate and collect the normal rate of tax on conveyances where a transferor corporation and transferee non-resident corporation are related as provided in section 2(2) of the said Regulation. In order to be eligible for the lower rate of tax,

an affidavit by an officer of the transferee corporation must be attached to and registered with the conveyance and must describe the circumstances that entitle the person tendering the conveyance for registration to the exemption authorized by section 2(1) of the said Regulation. This affidavit shall be in addition to all other affidavits required by the Act or Regulations.

#### Leases

12. Section 1(4) of The Land Transfer Tax Act provides that no tax is payable on the registration of a lease, transfer of lease, notice of lease, or assignment thereof, if at the time of registration the expired term, including renewals or extensions, of the lease is fifty years or less. This section reinforces Ontario Regulation 699/74 which appears at the end of this bulletin. It also clarifies the point that the unexpired term of the lease at the time of registration is the important factor in determining whether tax is payable.

The above exemption applies to transfers of leasehold land in the land titles system where the term of the lease being transferred is fifty years or less (including renewals or extensions).

The "value of consideration" with respect to a lease, notice of a lease or assignment thereof is the fair market value of the land ascertained as at the time of the tender for registration. In this regard, see section 1(1)(m)(v) of The Land Transfer Tax Act.

#### Affidavit of Residence

13. Section 4(7) of The Land Transfer Tax Act states that an affidavit of residence is not required where the transferee is -

- (a) Her Majesty the Queen in right of Ontario;
- (b) Her Majesty the Queen in right of Canada;
- (c) a Crown agency within the meaning of The Crown Agency Act;
- (d) the corporation of a municipality in Ontario;
- (e) the local board of a municipality in Ontario as defined in The Municipal Affairs Act;
- (f) an authority within the meaning of The Conservation Authorities Act;

- (g) a board of education operating a school in Ontario;
- (h) Ontario Hydro;
- (i) any corporation prescribed by the Minister by regulation; and
- (j) any individual acting in any official capacity prescribed by the Minister by regulation.

Reduction of  
Tax in certain  
cases

14. Section 16(4) of The Land Transfer Tax Act provides for a reduction of tax to non-residents in certain cases. The said section provides for five situations whereby a non-residence is entitled to pay the regular rate of tax, i.e. (\$3 per \$1,000 on the first \$35,000 and \$6 per \$1,000 on the excess) instead of the 20% rate of tax normally paid by non-residents. To be so entitled, an affidavit in the form prescribed by Ontario Regulation 110/75 must be attached to the conveyance.

Injurious  
Affection

15. Where land is conveyed to a person by whom notice of an intention to take it under statutory authority was given and compensation for injurious affection is paid by the person acquiring the land, the amount of such compensation is not part of the value of the consideration liable to taxation under the Act, and amounts paid for injurious affection should not be included in the land transfer tax affidavit. The amount paid to acquire the land itself is part of the value of the consideration on which tax is calculated.

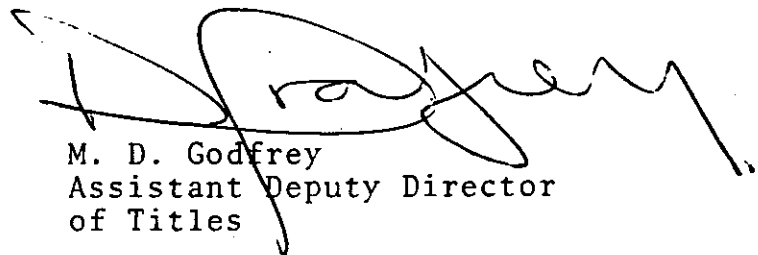
Value of  
Consideration

16. Where the value of the consideration for a conveyance is other than moneys paid in cash, and the Act does not specify the date as of which such a valuation shall be determined, it is the interpretation of the Ministry of Revenue that the value of the consideration shall be determined as of the date on which the agreement reflected in the conveyance was entered into in writing by the parties to the conveyance.

Assignment  
of Mortgage

17. Under section 1(1)(b) of the Act, "convey" does not include any transfer of land for the purpose only of securing a debt or loan, or any transfer by a creditor for the purpose only of returning land that has been used as security for a debt or loan.

It is the interpretation of the Ministry of Revenue that a conveyance of land that is an assignment of an existing mortgage which is solely an assignment of a security interest in the land is not a taxable conveyance when tendered for registration.

  
M. D. Godfrey  
Assistant Deputy Director  
of Titles

MDG/1s.

O. REG. 504/74  
REGULATION MADE UNDER  
THE LAND TRANSFER TAX ACT, 1974

EXEMPTION FOR CERTAIN FINAL ORDERS OF FORECLOSURE  
AND FOR INTER-CORPORATE TRANSFERS OF LAND

1.-(1) It is determined that the Act was not intended to apply to a final order of foreclosure under any mortgage or charge affecting land where the final order of foreclosure is made in an action commenced prior to the 10th day of April, 1974, and any person tendering for registration a final order of foreclosure made in action so commenced is exempt from the tax imposed by the Act.

(2) It is determined that the Act was not intended to apply to a conveyance of land from a corporation to its shareholders for the purpose of winding up or dissolving the corporation that is the transferor named in such conveyance, and any person tendering for registration such a conveyance is exempt from the tax imposed by the Act.

2.-(1) In this section, "subsidiary wholly-owned corporation" means a corporation all of the issued capital of which, except directors' qualifying shares, belongs to the corporation to which it is subsidiary.

(2) Subject to subsection 3, the Minister or any collector is authorized to exempt from that part of the tax payable under subsection 2 of section 2 of the Act that exceeds the amount of tax that would result if the rates under subsection 1 of the said section were applied, any person tendering for registration a conveyance to a non-resident corporation where,

- (a) the transferee is,
  - (i) a corporation of which the transferor is a subsidiary wholly-owned corporation,
  - (ii) a subsidiary wholly-owned corporation of the transferor, or
  - (iii) a subsidiary wholly-owned corporation of a corporation that is a subsidiary wholly-owned corporation of the transferor;
- (b) the transferor is a subsidiary wholly-owned corporation of a subsidiary wholly-owned corporation of the transferee; or
- (c) both transferor and transferee are,
  - (i) subsidiary wholly-owned corporations of a corporation or corporations that is or are subsidiary wholly-owned corporations of the same corporation.

(3) Where the exemption authorized by this section is claimed, there shall be furnished to the Minister or to the collector, as the case may be, an affidavit of an officer of the transferee corporation describing the circumstances that entitle the person tendering a conveyance for registration to the exemption authorized by this section and such affidavit shall be in addition to any other affidavit required by the Act or by Regulations made under the Act.

3. This Regulation shall be deemed to have come into force on the 10th day of April, 1974.

O. REG. 749/74  
 REGULATION MADE UNDER  
 THE LAND TRANSFER TAX ACT, 1974

EXEMPTION FOR CERTAIN EASEMENTS GRANTED TO OIL OR  
 GAS PIPE LINES

1. In this Regulation, "pipe line company" means a corporation whose principal business is the construction or operation of pipe lines for the transportation of oil, gas or other liquid and gaseous hydrocarbons and products thereof.

2. It is determined that any conveyance to or in trust for a pipe line company that conveys only an easement or right of way in, over, under or upon land, or that conveys only the right to acquire such an easement or right of way, and that is made for the purpose of enabling the pipe line company to construct and operate on the land described in the conveyance a pipe line for the transportation of oil, gas or other liquid and gaseous hydrocarbons and products thereof is a class of conveyance to which the Act was not intended to apply, and every person tendering for registration any such conveyance is exempt from the tax imposed by the Act on the tender thereof for registration.

O. REG. 138/75  
 REGULATION MADE UNDER  
 THE LAND TRANSFER TAX ACT, 1974

EXEMPTION FOR CERTAIN INTER-SPOUSAL TRANSFERS

1. It is determined that the Act was not intended to apply on the tender for registration of any conveyance where the transferor is the spouse or former spouse of the transferee and where sufficient information is provided to enable the Minister or any collector to whom the conveyance is tendered for registration to determine that one of the following conditions is satisfied:

- (a) the only consideration given for the conveyance apart from natural love and affection is the assumption of any encumbrance registered on the land described in the conveyance;



- (b) the conveyance is in compliance with the terms of a written agreement pursuant to which the parties have agreed to live separate and apart; or
- (c) the conveyance is in compliance with the direction of an order or judgment made by a court of competent jurisdiction.

O. REG. 699/74  
REGULATION MADE UNDER  
THE LAND TRANSFER TAX ACT, 1974

EXEMPTION FOR CERTAIN LEASEHOLD INTERESTS

1. It is determined that the Act was not intended to apply to that class of conveyance that is a lease of land for a term that, including any renewals or extensions provided for in such lease, cannot exceed fifty years, and any person tendering for registration any conveyance of the class herein described is exempt from the tax imposed by the Act. O. Reg. 699/74, s.1.
2. Ontario Regulation 468/74 is revoked. O. Reg. 699/74, s.2.
3. This Regulation shall be deemed to have come into force on the 10th day of April, 1974. O. Reg. 699/74, s.3.