



Ontario

Ministry of
Consumer and
Commercial
Relations

Ministère de la
Consommation
et du
Commerce

Registration
Division

Division de
l'enregistrement

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MEMORANDUM TO: Regional Managers
Land Registrars

FROM: Robert Blomsma
Director of Titles (Acting)
Real Property Registration Branch

RE: Bill 161....Land Transfer Tax Act

The enclosed notice appeared in the July 29, 1994 issue of the Ontario Report. Note the interpretation of section 1(6) of the Act.

"All registrations for leases and related instruments will now require an Affidavit of Residence and Value of the Consideration to be filed with the document evidencing the conveyance, including those with terms of less than fifty years".

To date, most offices have been requiring affidavits only for leases with unexpired term of more than fifty years. As a result of this ruling affidavits will be required with all leases, assignment of lease, subleases, options to lease and other transfers of interest in land as well as notices of all such interests.

This direction takes effect immediately. Land registrars should however permit registration without the affidavit if satisfied that the registrant did not have an adequate opportunity to obtain the affidavit, provided the purchaser or the purchaser's solicitor gives a written undertaking to provide the affidavit within five working days. All requests for information or assistance in completing the affidavit to comply with the requirement should be referred to the Ministry of Finance, Land Transfer Tax Section (905) 433-6361.

NOTICE TO SOLICITORS ON BILL 161 - LAND TRANSFER TAX ACT

Bill 161, The Revenue and Liquor Licence Statute Law Amendment Act, 1994, received 3rd Reading and Royal Assent on June 23, 1994.

Bill 161 includes among other amendments, changes to the Land Transfer Tax Act (Act). Most changes to the Act are administrative in nature. There are also substantive amendments to the Act which the Ministry would like to bring to your attention:

1. Subsection 4(3) of Bill 161 clearly defines "unrestricted land". Generally, the Act provides for tax rates ranging from 0.5 per cent to 2 per cent of the purchase price or other consideration given for most conveyances of land. When a non-resident person acquires an interest in land, the tax rate is 20 per cent unless the land can be classified as unrestricted land.

Unrestricted land excludes land used for agriculture or recreation, or as woodlands or orchards. Subsection 4(3) changes the definition of "unrestricted land" to stipulate that the land in question cannot be currently used or have been used within the last two years, for agriculture or recreation, or as woodlands or orchards where closing has taken place after May 20, 1993. This change is consistent with the previous administrative practice.

Therefore, when completing a "Non-Resident Application for Entitlement to Lower Rate of Land Transfer Tax", the applicant must certify the use of the land for the previous two years.

2. Subsection 4(4) of Bill 161 provides for a new Subsection 1(6) of the Act effective May 20, 1993 which confirms that option agreements are part of the lease term and are subject to Land Transfer Tax when the combined term exceeds 50 years. The amendment also makes sure that a person leasing must pay the tax even when:

- (1) the renewals or extensions to a lease term are contained in separate option agreements, or other similar documents, so that the term of a lease and any renewals or extensions can be more than 50 years; and

- (2) the person leasing and the person to whom the option is given or the person named in the document is the same or a different person.

In keeping with with the change to Subsection 1(6) of the Act, all registrations for leases and related interests will now require an "Affidavit of Residence and Value of the Consideration" to be filed with the documents evidencing the conveyance, including those with terms of less than 50 years.

3. **ALSO TAKE NOTE** that there are changes in the administrative requirements and terms under which a conveyance will be stamped before registration. Effective immediately a Deed will be stamped only when the Minister is:

- a) satisfied that no tax is payable
- b) satisfied that all taxes have been paid, or
- c) security for the tax has been furnished in a form and kind acceptable to the Minister.

All stamping of deeds will be subject to audit and assessment under Sub-section 12(4) of the Act. Applicants must ensure they have allowed sufficient time for a thorough review of the entire transaction.

The above amendments refer to sections of the Act but are not all inclusive. The descriptions have been developed from the Act, but are not a substitute for it. For further information, you can call the Ministry of Finance's Motor Fuels & Tobacco Tax Branch at (905) 433-5632.

Si vous désirez recevoir une version française du présent bulletin « Avis aux avocats concernant le Projet de loi 161 - Loi sur les droits de cession immobilière », veuillez téléphoner à la Direction de la taxe sur les carburants et le tabac au numéro de téléphone suivant : (416) 433-5632.