

## **1996 Amendments to the Real Estate Transfer Tax Related to Real Estate Investment Trusts**

On July 13, 1996, the New York State Real Estate Transfer Tax (the "transfer tax") and the New York City Real Property Transfer Tax (the "city transfer tax") were amended by Chapter 309 of the Laws of 1996. These amendments relate to the preferential tax treatment for conveyances made to a Real Estate Investment Trust (REIT). The amendments to these statutes are discussed in the order in which they appear in Chapter 309.

**Section 429** of Chapter 309 amended section 1402(b)(1) of the transfer tax to make permanent the provisions in the transfer tax enacted by Chapter 170 of the Laws of 1994 (the "Chapter 170 legislation"), which provided a reduced tax rate for conveyances of real property to a REIT upon its initial formation provided certain requirements are satisfied. For more information regarding the qualifying requirements, see TSB-M-94(4)-R. Before the enactment of Chapter 309, those provisions were scheduled to expire on September 1, 1996.

**Section 430** of Chapter 309 amended section 1402(b)(2)(B) of the transfer tax to extend the reduced rate of tax to certain conveyances of real property other than those described in the Chapter 170 legislation. The Chapter 170 legislation limited the application of the reduced tax rate to only those conveyances made in connection with the initial formation of the REIT.

Under Chapter 309, the reduced tax rate will be extended to all conveyances to a REIT, or to a partnership or corporation in which a REIT owns a controlling interest. However, certain conditions must be met. To qualify for the reduced tax rate, the grantor is required to receive, as consideration for the conveyance, an ownership interest in the REIT or in a partnership or corporation in which the REIT owns a controlling interest equal in value to at least 50 percent of the equity value of the real property or interest in real property being conveyed. In addition, the two-year ownership retention requirement, as provided in section 1402(b)(2)(B)(i) of the Tax Law and described in TSB-M-94(4)-R, must be met.

Also, before the amendments by Chapter 309, the statutory rules for computing the value of the real property or interest being conveyed provided that a mortgage created in contemplation of the initial formation of the REIT shall not be considered. Section 430 of Chapter 309 amended this provision to state that any mortgage created in contemplation of a conveyance of real property to the REIT or to a partnership or corporation in which the REIT owns a controlling interest also shall not be considered when computing the equity value. This expansion of the preferential tax treatment to conveyances other than in connection with the initial formation of the REIT will not apply to conveyances that occur on or after September 1, 1999.

**Sections 431 through 433** of Chapter 309 make parallel amendments to section 1201(b)(xi) of Article 29 of the Tax Law and section 11-2102(e) of the Administrative Code of the City of New York, concerning the city transfer tax.

**Section 434** of Chapter 309 repealed the grandfather provision applying to REIT transfers in connection with the initial formation of a REIT occurring after the previous sunset date of September 1, 1996, but pursuant to binding written contracts entered into before that date. Once the amendments affording a preferential tax treatment were made permanent this provision was no longer needed.

**Section 435** of Chapter 309 adds a grandfather provision applicable to REIT transfers other than those in connection with the initial formation of the REIT that occur on or after September 1, 1999. This provision states that these transfers will receive the benefit of the reduced tax rate if they are pursuant to binding written contracts entered into before September 1, 1999.