Follow-up information for Testimony Regarding Assessing Repeal of the Land Gains Tax

To: The House Committee on Ways and Means
Date: February 11, 2019

Presented by James Knapp, Co-Chair of the Vermont Bar Association – Real Estate Section

At the hearing on February 5, 2019, the Committee asked for additional ideas for modifications to the land gains tax program to ease the administration and to alter the scope of transactions that are subject to land gains tax, without repealing the program.

The witnesses opposed to repeal suggest that repeal of the land gains tax will result in enhanced "parcelization" of forest and farm lands. The ideas submitted below would focus the continued land gains tax program on addressing this concern, while otherwise reducing the number of transactions in which returns are required and a tax due.

PART A. Repeal of the Entire Program is the Preferred Option

The VBA Real Estate Section continues to believe that the best resolution to current concerns about the land gains tax program is repeal. The VBA Real Estate Section continues to believe that the current permit process is a more reliable method of regulating subdivision than a tax program that has developed in a way that properties that were not intended to be subject to tax are the properties most often involved in the filing of returns.

Part B. – Alter the Land Gains Tax Program to Reduce the Scope of Transactions Subject to Tax

In response to the Committee's inquiry about changes to the land gains tax program that do not involve a complete repeal, the members of the Section have offered the following

1. (Preferred solution) – Amend the land gains tax program so that no tax is due and no return is required to be filed:

    a. If the land being sold is improved with one or more structures usable for residential, commercial, industrial, agricultural or other uses at the time of sale; or,

    b. Without regard to whether the land is improved or not, the Seller has not subdivided the property into two or more lots of less than 25 acres each during the first three years of the Seller's ownership of the parcel; or,

    c. Without regard to whether the property is improved or not, if the sale is by an estate when there is no subdivision during the holding period of the Estate; or,

    d. Without regard to whether the property is improved or not, if the sale is to a government agency, entity, authority, or an intermediary who is temporarily holding title pending a final transfer to a government authority.

The two changes would focus the land gains tax as a disincentive to subdividing parcels of land and would address the concerns that repeal of the land gains tax would incentivize expanded speculation involving farm and forest land.

2. Reduce the period during which the land gains tax applies from 6 years to 3 years or 2 years in conjunction with expanding the exceptions as suggested in 3.

3. Maintain the current program but expand the exemptions – to include all transfers (sales):

    a. Improved real estate where there is no subdivision during the first three years of Seller's ownership, or alternatively when there is a subdivision that creates no more than 3 lots total during the first six years of Seller's ownership.
    b. Of residential properties of any size, if there is no subdivision during the first three years of the holding period of the seller;
    c. Of condominium units and timeshares
    d. By an estate when there is no subdivision during the holding period of the Estate; and,
    e. To a government agency, entity, authority, or an intermediary who is temporarily holding title pending a final transfer to a government authority

4. Whether the solution is 1, 2, or 3, change Administrative provisions of the land gains tax program in conjunction with the expansion of exceptions as suggested in Item 3, by:

    a. Removing the requirements for reporting at time of sale. Impose the obligation on the Seller to report the sale at the time the Income Tax return is filed and pay the tax then. Remove the buyer from the obligation to withhold at the time of sale, and impose the entire liability to comply on the Seller; in the alternative,
    b. Expand the time frame for filing any withholding that may be required to 30 days from the closing instead of immediately upon closing. This would be similar treatment to the Non-Resident Withholding requirement on real estate sales.

The VBA Real Estate Section remains available to provide information related to any programmatic changes adopted by the Committee. The membership of the Real Estate Section greatly appreciates the time and effort of the Committee to the study and possible alteration of the Land Gains Tax Program.