

Summary of Testimony regarding Assessing Repeal of the Land Gains Tax
To: The House Committee on Government Operations
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Presented by James Knapp, Co-Chair of the Vermont Bar Association – Real Estate Section

Background: I am a licensed attorney who has been in practice for 38 years. I presently serve as the Co-Chair of the Vermont Bar Association Real Property Section, and I have also served as the recorder of the proceedings of the Title Standards sub-committee for more than 25 years. During my career I have been in private practice concentrating in the area of real estate transactions including acquisition, financing, development and dispositions of all forms of property interest. I regularly provide continuing legal education programs for attorneys in all areas of real property law. My career includes being in private practice for 25 of the 38 years, a title insurance company underwriter and state counsel for 8 of the 38 years and was the Interim Director of Property Valuation and Review from 2013 to 2015. I was also a member of the adjunct faculty at Champlain College for over 10 years, presenting the Advanced Real Estate Course in the College's Paralegal program.

Summary of Testimony

During the years in private practice I was involved in a number of transactions where Land Gains Tax was a potential issue, so I have had experience in preparing Land Gains Tax Returns.

The question of the efficacy of the Land Gains Tax was raised at two seminars in 2018. At the Rutland County Bar Meeting, attended by 35-40 practitioners involved in real estate, estate planning and business transactions, there was a spirited discussion about the land gains tax and the impact on clients' real estate transactions, resulting in a near universal assessment that the land gains tax no longer fulfills the policy underpinning its original adoption. In November of 2018, about 190 practitioners in real estate from all over Vermont met in Burlington. The same spirited discussion was had, and the same result, there was near universal approval of the repeal of the land gains tax due to its adverse impact on clients' real estate transactions.

- In my experience:
 - On the seller's side of the transaction, the client will pay hundreds of dollars in additional fees for the transaction relating to the preparation and submission of the land gains tax returns.
 - More than half of the returns prepared will result in the payment of no tax to the State.
 - The transactions for which returns are filed were not the transfers intended to be the subject of the land gains tax program:
 - Sales of improved real estate by heirs who inherit the property from parents or grandparents and sell within the six year timeframe during which land gains applies.
 - Sales of improved real estate in the situation where the seller has purchased a distressed property, often through foreclosure or tax sale, invested money in

rehabilitation and then sells the property. This type of transaction is especially beneficial in Vermont where property is returned to the housing stock.

- Sales of property in connection with the sale of a business.
- The majority of transactions for which a land gains tax is required involve improved properties, often residential or business property. Most returns do not report substantial gains on the sale of the land, which is the only component subject to land gains tax.
- The land gains tax program was originally proposed to reduce the speculation in land which was rampant in the 1960's. The idea was to penalize those who purchased tracts of land, divided the land into numerous lots and sold the lots either through land auctions or through sales programs advertised outside the State of Vermont. The adoption of the original Department of Health Subdivision Regulations and ACT 250 are far more effective to regulate large subdivisions.
- The land gains tax program as presently configured provides enough exemptions to residential real estate developers to render the program ineffective at regulating residential subdivisions.
 - The sale of improved real property that will become the buyer's principal residence is exempt from land gains tax.
 - The sale of an unimproved lot to person who will construct a residence on the property in the next two years following the sale and will occupy the residence as their primary residence is exempt from land gains tax.
 - The sale of an unimproved parcel to a developer / builder who will commence construction of a residence on the property in one year, complete in two years and sell to a person who will occupy the residence as a principal residence in three years is exempt from land gains tax.

Between these three exemptions, most residential developments escape the land gains tax, meaning that the existence of the tax does not persuade developers not to engage in subdivision activity.

- When assessing the land gains program, it is worth noting that a residential property can include up to 10 acres of land, and in special cases, where the local zoning rule require a minimum lot size for a residence of more than 10 acres and up to 25 acres will be treated as exempt residential real estate.
- From my brief tenure at PVR, the administration of the land gains tax program is resource intensive as there are a lot of requests to review and approve land gains tax returns for which no tax will be collected.

In summary,

- The land gains tax program no longer addresses the policy that supported it's adoption

- The land gains tax program imposes significant costs on sellers of real property without returning revenue that is reasonably proportionate to the cost of administration.
- The administration of the land gains tax program is resource intensive for limited returns. The Tax Department resources could be redirected at programs that return more tax revenue.