



Leases and the *Land Transfer Tax Act*

This bulletin was revised June 2008 to incorporate formatting changes and changes in ministry name and contact information only.

- This bulletin clarifies the application of the *Land Transfer Tax Act* (“Act”) to leases
- This bulletin provides general information. It is not exhaustive and should not be considered as a substitute for the *Land Transfer Tax Act* and its regulations.

Exemption - Leases with a Term Not Exceeding 50 Years

For Registered Conveyances:

Subsection 1(6) of the Act sets out in part that:

“...no tax is payable on the tender or submission for registration of a conveyance that is a lease of land, the transfer of the interest of a lessee under a lease of land, or a notice of any kind in writing signifying the existence of a lease of land or of a transfer of the interest of a lessee under a lease of land if the lease, at the time the lease or transfer or notice of either of them is tendered or submitted for registration, is for an unexpired term that cannot exceed 50 years, including any renewals or extensions of the term provided for in the lease or in a separate option to lease or other document entered into as part of the arrangement relating to the lease (whether or not the lessee and the optionee or person named in the document are the same persons).”

For Unregistered Dispositions:

Subsection 3(1) of the Act sets out in part that:

“For purposes of this section, a disposition of a beneficial interest in land...does not include,

- f) a lease of land or a transfer of the interest of a lessee under a lease of land if, at the time of the disposition, the unexpired term of the lease cannot exceed 50 years, including any renewals or extensions of the term provided for in the lease or in a separate option to lease or other document entered into as part of the arrangement relating to the lease (whether or not the lessee and the optionee or person named in the document are the same persons)...”

Note: Although leases that cannot exceed 50 years are not subject to tax, an Affidavit of Residence and Value of the Consideration is required for registered conveyances. Paragraph 7 of the affidavit should be completed to show that the conveyance being registered is a lease the term of which, including any extensions or renewals, cannot exceed 50 years and there are no other options, agreements, etc. that increase that term.

Leases With a Term Exceeding 50 Years

Value of the Consideration Deemed to be Fair Market Value:

Paragraph (c) of the definition of “value of the consideration” in section 1 of the Act sets out the value of consideration of land conveyed by lease **not** exempt from tax (see 1 above) as follows:

“in the case where a lease of land, a transfer of the interest of a lessee under a lease of land, or a notice of any kind in writing signifying the existence of an unregistered lease of land or of an unregistered transfer of the interest of a lessee under a lease of land is not exempt from tax by virtue of subsection (6), the fair market value, ascertained as at the time of the tender of submission for registration, of the land to which the lease extends or of a smaller portion of such land if only such smaller portion is conveyed.”

This definition also applies to the determination of the consideration in the case of an unregistered disposition under section 3 of the Act, that is a lease that is **not** exempt from tax pursuant to clause 3(1)(f). The fair market value in those cases is to be determined as at the date of disposition. This valuation is subject to the Ministry’s verification.

Acquisition of Freehold Interest by Person Who Holds Leasehold Interest

Subsection 1(3) of the Act reads as follows:

“Where a person entitled to the leasehold interest in land acquires the freehold interest therein, the value of the consideration for the conveyance to the person of the freehold interest may be reduced by the amount of the value of the consideration for the conveyance by which the person acquired the leasehold interest if the value of that consideration was determined under clause (c) of the definition of “value of the consideration” in subsection (1) and tax was computed and paid with respect to the value of that consideration so determined, but the reduction shall not exceed the value of the consideration for the conveyance of the freehold interest.”

Essentially, clause (c) of the definition of “value of the consideration” identifies this value as the fair market value of the land to which the lease extends.

In order to achieve the reduction in the consideration available in subsection 1(3), a request must be submitted to the Ministry of Revenue with payment of the tax based on the reduced consideration declared. The following documentation will be required:

1. Original, duplicate and one photocopy of the document to be registered.
2. Three original signed Affidavits of Residence and Value of the Consideration setting out the reduced consideration.
3. Copy of the registered document where the tax had been paid on the fair market value of the land.
4. Copies of all agreements between the parties relating to the transaction.
5. Cheque for applicable tax

Regulation 700, RRO 1990

Regulation 700, RRO 1990 provides for an adjustment of the consideration in certain situations involving leases:

1. In the case of an extension or a notice of an extension of a lease or sublease, when the original term of that lease (including any renewals or extensions) can exceed 50 years, the taxable consideration is reduced to the actual consideration passing (or to zero if there is no consideration passing).
2. In the case of a surrender or notice of surrender of the rights of a lessee under a lease or a sublease to the person entitled to the reversion of such lease or sublease, when the term of that lease (including any renewals or extensions) can exceed 50 years, the consideration is reduced to the actual consideration passing (or to zero if there is no consideration passing).
3. In the case of a transferee who acquires the reversionary interest in land, and at the same time acquires the right to receive rental payments under one or more leases, the term of each of which, including any renewals or extensions exceeds 50 years, the consideration is deemed to be the higher of the fair market value of the land at date of registration or the actual consideration passing.

Note: Where Regulation 700 RRO 1990 is applicable, the Affidavit of Residence and Value of the Consideration should be prepared setting out the applicable consideration under paragraph 4 and an explanation in paragraph 7 of the affidavit setting out how the consideration was determined. This regulation also applies to dispositions under section 3 of the Act.

Additional Information

If this bulletin does not completely address your particular situation, refer to the Act and related regulations, or contact the:

Ministry of Revenue
Land Transfer Tax Program
33 King Street West
Oshawa, ON L1H 8H9

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This bulletin and various other English and French tax materials published by the Ministry of Revenue may be obtained online at ontario.ca/revenue.

The *Land Transfer Tax Act* and Ontario's other public statutes and regulations may be obtained online at www.e-laws.gov.on.ca.

Ce bulletin est disponible en français.

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