

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

M E M O R A N D U M

TO: Frank Breslin, Revenue Commissioner

CC: Rebecca Lopez Kriss, Deputy Revenue Commissioner
Tilahun Afessa, Director of Tax Policy
Joseph F. Procopio Jr., Manager – Technical Staff

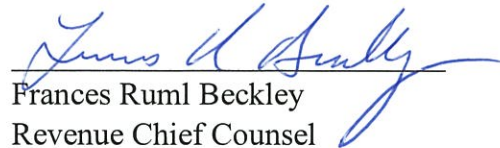
FROM: Frances Ruml Beckley, Revenue Chief Counsel

DATE: December 10, 2021

SUBJECT: Amendment to the Real Estate Transfer Tax Regulations

I have reviewed the attached amendment to the Philadelphia Real Estate Transfer Tax Regulations to clarify the existing rules on lease renewals. I find the attached amendments to be legal and in proper form.

In accordance with Section 8-407(a) of The Philadelphia Home Rule Charter, you may now forward these amended regulations to the Department of Records where they will be made available for public inspection.


Frances Ruml Beckley
Revenue Chief Counsel

Amending Section 503 the City of Philadelphia Real Estate Transfer Tax Regulations

CITY OF PHILADELPHIA

REAL ESTATE TRANSFER TAX REGULATIONS

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Subchapter E. EXCLUDED PARTIES AND TRANSACTIONS.

Sec. 503. Excluded Transactions.

- (a) Excluded parties. A transaction in which all parties are excluded parties pursuant to Sec. 502(a) (relating to excluded parties) is excluded from tax.
- (b) Additional exclusions. Other transactions which are excluded from tax include:

* * *

- (23) A real estate lease or occupancy agreement, unless one of the following applies:
 - (i) The lease or occupancy agreement is perpetual or otherwise approximates a perpetual lease.
 - (ii) **The lease or occupancy agreement ~~can be termed a "capital" lease under the Generally Accepted Accounting Principles (G.A.A.P.) Accounting for Leases.~~ endures for a term of thirty years or more. In determining the term of a lease, it shall be presumed that a right or option to renew or extend a lease will be exercised if the rental charge to the lease is fixed or if a method for calculating the rental charge is established. Arbitration or any other procedure from which either party cannot unilaterally withdraw is a method for calculation of the rental charge.**

~~G.A.A.P. requires that a capital lease must have one of the following requirements:~~

~~1. Title in the real estate is transferred to the lessee at the end of the term.~~

~~2. The lease contains a bargain purchase option (or other method for lessee to acquire ownership).~~

~~3. The "lease term" is 75% or more of the economic life of the real estate. Lease term included the time period specified in the lease agreement and the periods covered by renewal options.~~

~~4. The present value of the lease payment is 90% or more of the fair value of the lease and real estate; or~~

- (iii) The lease does not constitute an excludible lease under Sec. 419 (relating to sale and leaseback transactions).
- (24) A transfer of a deed to a burial site which does not convey title to land but only a right to sepulchre and to erect monuments.
- (25) The rescission, cancellation or abandonment of an existing lease or contract for a deed **for no or nominal consideration**.
- (26) A sublease or the assignment of a lessee's rights under an existing lease **for no or nominal consideration**, unless the lessee is released from performance under the lease by the lessor. **In the case that the lessee is not released, the City has the right to review the lessee's assets to determine the sufficiency thereof.**

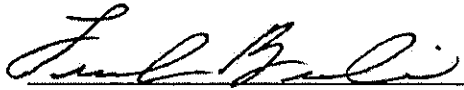
Example I:

B, the lessee under a lease with A, subleased the leased premises to C. B remained liable to A for full performance under the lease. The sublease is not taxable because B has not been released from performance under the lease by A.

Example II:

E, the lessee under a 99 year lease with D, assigned the leased premises to F. D released E from future performance under the lease.

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Frank Breslin, CPA
Revenue Commissioner and Chief Collection Officer

Date: 12/10/2021

Underline and Bold denote matters added

~~Strikethrough and Bold~~ denote matters deleted