



**INTERNATIONAL
MARKETS**

Gains Tax Repeal Sparks International Real Estate Market

By Eric P. Gonchar

On July 13, 1996, Governor Pataki signed a bill repealing Article 31-B of the New York State Tax Law. The bill effectively eliminated the NYS Real Property Transfer Gains Tax known as the "Cuomo Tax" on all real estate transfers of \$1,000,000 or more effective June 15, 1996.

The Gains Tax was first enacted on March 28, 1993 by Governor Cuomo, in an effort to raise money to balance the New York State budget. The tax provided for a 10% levy on the gain derived from the transfer of real property where the gross sales price was \$1,000,000 or more. The "gain" subject to the tax was the difference between the "consideration" received for the transaction and the "original purchase price" of the property. The consideration was the price paid to the transferor less any brokerage

fees paid. The "original purchase price" was the amount paid by the transferor to acquire the interest in the real property plus an amount paid for capital improvements, legal fees, engineering and architectural fees. The tax discouraged transactions and distorted the economics of the real estate market, since deals were structured differently to avoid its effects. The tax was applied even if the debt secured against the property was in excess of the sales price. The tax also required a torturous pre-filing procedure calling for numerous forms and affidavits.

It appears that the enacting of this new law will further spark the return of the commercial real estate market. Now that millions of dollars will be saved upon the sale of a property, it is safe to assume that international investors, and

Europeans in particular, will increase their already proven commitment to New York City, and will become again a prop in the market. At the very least, New York City has become again an attractive place to invest capital in real estate. This new legislation will put real estate transfers on an equal footing with the rest of the country. As a note, since the law is retroactive to June 15, 1996, sellers who paid the tax after that date could file for a refund.

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