

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NEW YORK**

### **Malba Cove Properties, Inc. v. Tax Appeals Tribunal of State**

**Supreme Court, Appellate Division, Third Department, New York - January 9, 2014 -  
N.Y.S.2d - 2014 N.Y. Slip Op. 00145**

Former property owner commenced Article 78 proceeding to review determination by Tax Appeals Tribunal which sustained imposition of real property transfer gains tax assessment after property was taken by eminent domain.

The Supreme Court, Appellate Division, held that transfer of owner's property to city as part of eminent domain taking occurred after repeal of statute imposing tax.

Transfer of owner's property to city as part of eminent domain taking occurred after repeal of statute imposing tax of 10% of gains derived from certain real property transfers, and therefore, owner did not owe the tax, despite city filing condemnation order and acquisition map prior to statute's repeal. City asserted it owned the property at time it commenced condemnation proceedings, but named owner as party with possible interest, it was unclear whether transfer involving owner would occur until city lost title issue, and title was not cleared until after statute was repealed.