



TITLE 30

State Taxes

Commodity Taxes

CHAPTER 54. REALTY TRANSFER TAX

Subchapter I. Realty Transfer Tax

§ 5401. Definitions.

As used in this subchapter, except where the context clearly indicates a different meaning:

(1) "Document" means any deed, instrument or writing whereby any real estate within this State, or any interest therein, shall be quitclaimed, granted, bargained, sold or otherwise conveyed to the grantee, but shall not include the following:

- a. Any will;
- b. Any lease other than those described or defined in paragraph (4) of this section below;
- c. Any mortgage;
- d. Any conveyance between corporations operating housing projects pursuant to Chapter 45 of Title 31 and the shareholders thereof;
- e. Any conveyance between nonprofit industrial development agencies and industrial corporations purchasing from them;
- f. Any conveyance to nonprofit industrial development agencies;
- g. Any conveyance between husband and wife;

h. Any conveyance between persons who were previously husband and wife, but who have since been divorced; provided such conveyance is made after the granting of the final decree in divorce and the real estate or interest therein subject to such conveyance was acquired by the husband and wife, or husband or wife, prior to the granting of the final decree in divorce;

i. Any conveyance between parent and child or the spouse of such a child;

j. Any conveyance (a) to a trustee, nominee or straw party for the grantor as beneficial owner, (b) for the beneficial ownership of a person other than the grantor where, if such person were the grantee, no tax would be imposed upon the conveyance pursuant to this chapter, or (c) from a trustee, nominee or straw party to the beneficial owner;

k. Any conveyance between a parent corporation and a wholly-owned subsidiary corporation; provided such conveyance is without actual consideration;

l. Correctional deeds without actual consideration;

m. Any conveyance to or from the United States or this State, or to or from any of their instrumentalities, agencies or political subdivisions and the University of Delaware;

n. Any conveyance to or from a corporation, or a partnership, where the grantor or grantee owns stock of the corporation or an interest in the partnership in the same proportion as the grantor's or grantee's interest in, or ownership of, the real estate being conveyed; provided, however, that this paragraph shall not apply to any distribution in liquidation or other conveyance resulting from the partial or complete liquidation of a corporation, unless the stock of the corporation being liquidated has been held by the grantor or grantee for more than 3 years; provided, further, this paragraph shall not apply to any conveyance from a partnership to its partners unless the partners' interest in the partnership has been held for more than 3 years;

o. Any conveyance by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises are taken in trade by

such builder as a part of the consideration from the purchaser of new, previously unoccupied premises;

p. Any conveyance to the lender holding a bona fide mortgage, which is genuinely in default, either by a sheriff conducting a foreclosure sale or by the mortgagor in lieu of foreclosure;

q. Any conveyance to a religious organization or other body or person holding title to real estate for a religious organization, if such real estate will not be used following such transfer by the grantee, or by any privy of the grantee, for any commercial purpose; provided, however, that only that portion of the tax which is attributable to and payable by the religious organization or other body or person holding title to real estate for a religious organization under § 5402 of this title shall be exempt;

r. Any conveyance to or from a volunteer fire company, organized under the laws of this State; provided, however, that only that portion of the tax which is attributable to and payable by the volunteer fire company under § 5402 of this title shall be exempt;

s. Any conveyance of a "mobile home" as defined in § 7003 of Title 25, provided tax on said conveyance has been paid under § 3002 of this title;

t. Any conveyance without consideration to an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. § 501(c)(3)];

u. Any conveyance to a nonprofit conservation organization when the property is purchased for open space preservation purposes;

v. Any conveyance to or from an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code when the purpose of said conveyance is to provide owner-occupied housing to low and moderate income households by rehabilitating residential properties and reselling said properties without profit.

w. Any conveyance between siblings, half siblings, or step siblings.

(2) "Transaction" means the making, executing, delivering, accepting or presenting for recording of a document.

(3) "Value" means, in the case of any document granting, bargaining, selling or otherwise conveying any real estate or interest or leasehold interest therein, the amount of the actual consideration thereof, including liens or other encumbrances thereon and ground rents, or a commensurate part of the liens or other encumbrances and ground rents which encumber the interest in real estate and any other interest in real estate conveyed; provided, that in the case of a transfer for an amount less than the highest appraised full value of said property for local real property tax purposes, "value" shall mean the highest such appraised value unless the parties or one of them can demonstrate that fair market value is less than the highest appraised value, in which case "value" shall mean fair market value, or actual consideration, whichever is greater. A demonstration that the transaction was at arm's length between unrelated parties shall be sufficient to demonstrate that the transaction was at fair market value.

(4) The term "document" defined in paragraph (1) of this section shall include the following:

a. Any writing purporting to transfer a title interest or possessory interest for a term of more than 5 years in a condominium unit or any unit properties subject to the Unit Property Act;

b. Any writing purporting to transfer a title interest or possessory interest of any lessee or other person in possession of real estate owned by the State or other political subdivision thereof;

c. Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than 5 years. For this purpose, the term "residential property" means any structure or part of structure which is intended for residential use, and excluding any commercial unit subject to tax under § 2301(a)(6) of this title, relating to commercial lessors.

(5) In determining the term of a lease under paragraph (4) of this section above, it shall be presumed for the purpose of computing the lease term that any rights or options to renew or extend will be exercised.

(6) For purposes of paragraph (3) of this section, in the case of a document described in paragraph (4) of this section under which the consideration is based in whole or in part on a percentage of the income or receipts to be received in the future, actual consideration

shall include the amounts actually received under such percentage of income or receipts provision; provided, however, and notwithstanding any other provisions of this chapter, that the tax imposed by this chapter shall be due and payable to the Division of Revenue within 30 days after the date such amounts become due and payable under the agreement.

(7)a. Except as provided in paragraphs (7)b. and c. of this section, where beneficial ownership in real estate in this State is transferred through a conveyance or series of conveyances of intangible interests including mergers and all other indirect exchanges, in a corporation, limited liability company, partnership, trust, pass-through entity or other entity, such conveyance shall be taxable under this chapter as if such property were conveyed through a duly recorded "document" as defined in paragraph (1) of this section, and subject to the exemptions contained therein, except those exemptions contained in paragraphs (1)j. and n. of this section.

b. No bona fide pledge of stock or limited liability membership interest, or partnership interests as loan collateral nor any transfer of publicly traded stock; publicly traded limited liability company member interest or publicly traded partnership interest shall be deemed subject to taxation under this paragraph.

c. Where the beneficial owners of real property prior to the conveyance or series of conveyances referred to in this paragraph own 80% or more of the beneficial interest in the real estate following said conveyance or conveyances, such transfers shall not be subject to tax under this paragraph. Where the beneficial owners of real property prior to the conveyance or series of conveyances referred to in this paragraph own less than 80% of the beneficial interest in the real estate following said conveyance or conveyances, such transfers shall not be subject to tax under this paragraph, unless, under regulations promulgated by the Secretary of Finance, such transfer or transfers are properly characterized as a sale of real property. Such characterization shall take into account the timing of the transaction, beneficial ownership prior to and subsequent to the conveyance or conveyances; the business purpose of the corporation, limited liability company, partnership, trust, pass-through entity or other entity, and such other factors as may be relevant.

(8)a. Notwithstanding paragraph (1) of this section, there shall be included in the definition of "document" for purposes of this chapter any contract or other agreement or undertaking for the

construction of all or a part of any building all or a portion of which contract, agreement or undertaking (or any amendment to the foregoing) is entered into, or labor or materials are supplied, either prior to the date of the transfer of the land on which the building is to be constructed or within 1 year from the date of the transfer to the grantee.

b. No jurisdiction in this State shall issue a building permit for any such building unless and until the person or persons (including corporations or other associations) requesting such permit shall demonstrate in whatever form may be specified by the Director of Revenue, including at the Director's discretion, a form of affidavit, that:

(i) No transfer as described in this section has occurred within the preceding year;

(ii) No portion of the contract for construction for which the permit is being requested was entered into and no materials or labor with respect to the building have been provided within 1 year of the date on which the property was transferred; or

(iii) There has been paid a realty transfer tax on the document as defined in this paragraph.

c. In addition, no jurisdiction in this State shall issue a certificate of occupancy relative to any building on which a tax is provided by this subsection unless and until the owner recertifies the actual cost of the building and pays any additional tax due as a result of such recertification.

d. A "building" for purposes of this paragraph shall mean any structure having a roof supported by columns or walls which structure is intended for supporting or sheltering any use or occupancy but shall not include any alteration of or addition to an existing building where the cost of said alteration or addition is less than 50% of the value of the property transferred.

e. A "transfer" for purposes of this paragraph shall include any transfer made by a "document" as described in this section, other than this paragraph, and shall not include any transaction excluded from the definition of "document" under the provisions of paragraphs (1)a.-u. of this section.

30 Del. C. 1953, § 5401; 55 Del. Laws, c. 109, § 1; 55 Del. Laws, c. 413, § 1; 59 Del. Laws, c. 153, §§ 1-4; 60 Del. Laws, c. 507, § 3; 62 Del. Laws, c. 316, § 1; 64 Del. Laws, c. 182, §§ 1, 2; 65 Del. Laws, c. 118, § 3; 65 Del. Laws, c. 426, § 1; 67 Del. Laws, c. 40, §§ 8, 9; 67 Del. Laws, c. 262, § 1;

§ 5402. Rate of tax; when payable; exception.

(a) Every person who makes, executes, delivers, accepts or presents for recording any document, except as defined or described in § 5401(4) of this title, or in whose behalf any document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or any part thereof, a realty transfer tax at the rate of 2 percent of the value of the property represented by such document, unless the municipality or county where the property is located has enacted the full 11/2 percent realty transfer tax authorized by § 1601 of Title 22 or § 8102 of Title 9, in which case 11/2 percent, which tax shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording. Said tax is to be apportioned equally between grantor and grantee.

(b) No tax shall be imposed on conveyances when the actual value of the property being transferred is less than \$100.

(c) Notwithstanding subsection (a) of this section, where a valid written contract is entered into prior to August 1, 1971, the tax for such a transfer shall be at the rate imposed prior to August 1, 1971.

(d) Every person who makes, executes, delivers, accepts or presents for recording any document defined or described in § 5401(4) of this title, or in whose behalf any such document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or in any part thereof, a realty transfer tax at the rate of 2 percent of the value of the property represented by such document, unless the municipality or county where the property is located has enacted the full 11/2 percent realty transfer tax authorized by § 1601 of Title 22 or § 8102 of Title 9, in which case 11/2 percent, which tax shall be payable as follows:

(1) The tax on the consideration attributed to the first year of the term shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording;

(2) The tax on the consideration attributed to each successive year of the term thereafter shall be paid annually to the Division of Revenue.

(e) There shall be no tax imposed on any document described in § 5401(4) of this title entered into prior to July 7, 1973.

(f) Notwithstanding subsection (a) of this section, the rate of tax on documents described in § 5401(8) of this title shall be 1 percent on amounts exceeding \$10,000, which shall be borne by the owner of the building whose construction is made subject to tax under § 5401(8).

30 Del. C. 1953, § 5402; 55 Del. Laws, c. 109, § 1; 58 Del. Laws, c. 297; 59 Del. Laws, c. 153, §§ 5, 7; 67 Del. Laws, c. 262, § 2;

§ 5403. Transfer by broker.

Where there is a transfer of a residential property by a licensed real estate broker, which property was transferred to the broker within the preceding year as part of the consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to the broker shall be given to the broker toward the amount of the tax due upon the transfer. If the tax due upon the transfer from the licensed real estate broker is greater than the credit given for the prior transfer, the difference shall be paid and if the credit allowed is greater than the amount of the tax due, no refund shall be allowed.

30 Del. C. 1953, § 5403; 55 Del. Laws, c. 109, § 1;

§ 5404. Payment from proceeds of judicial sale.

The tax imposed by this subchapter shall be fully paid and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale and of the writ upon which the sale is made, and the sheriff, or other officer conducting said sale, shall pay the tax imposed out of the first moneys paid to the sheriff or other officer in connection therewith; provided, that if prior to delivery of the deed pursuant to the said sale, the purchaser shall deliver to the sheriff an affidavit as described in § 5409 of this title that the transfer is exempt from tax under § 5401(1)p. of this title, the sheriff shall not pay the tax, but shall deliver the affidavit to the Recorder of Deeds as agent for the Department of Finance.

30 Del. C. 1953, § 5404; 55 Del. Laws, c. 109, § 1; 62 Del. Laws, c. 316, § 2;

§ 5405. Documentary stamps; affixing; cancellation; other methods.

(a) The payment of the tax imposed by this subchapter shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering or presenting such document for recording. Such stamps shall be affixed in such manner that their removal will require the continued application of steam or water and the person using or affixing such stamps shall write, stamp or cause to be written or stamped thereon the initials of the person's name and the date upon which such stamps are affixed or used so that such stamps may not again be used; provided, that the Department of Finance may prescribe such other method of cancellation as it may deem expedient.

(b) The Department of Finance may, by regulation, provide for the evidence of the payment of the tax to be shown on the document by means other than the affixing of documentary stamps.

30 Del. C. 1953, § 5405; 55 Del. Laws, c. 109, § 1; 57 Del. Laws, c. 741, § 17A;

§ 5406. Furnishing stamps; sale; agents; compensation; bond premiums.

(a) The Department of Finance shall prescribe, prepare and furnish stamps, of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this subchapter. The Department of Finance shall make provisions for the sale of such stamps in such places as it may deem necessary.

(b) The Department of Finance may appoint the recorder of deeds in each county, and other persons within or without the State, as agents for the sale of stamps to be used in paying the tax imposed by this subchapter upon documents and may allow a commission to said agents of 1 percent of the face value of the stamps. The commissions allowed to a Recorder of Deeds shall be turned over to the county treasurer in which the tax is collected, for the use of the county.

(c) The Department of Finance shall pay the premium on any bond required by the Department of Finance to be procured by any agent for the performance of the agent's duties under this subchapter.

30 Del. C. 1953, § 5406; 55 Del. Laws, c. 109, § 1; 55 Del. Laws, c. 286; 57 Del. Laws, c. 741, § 17A; 63 Del. Laws, c. 446, § 1; 64 Del. Laws, c. 15, § 1;

§ 5407. Enforcement; rules and regulations.

The Department of Finance shall enforce this subchapter and may adopt and enforce rules and regulations relating to:

(1) The method and means to be used in affixing or cancelling of stamps in substitution for, or in addition to, the method and means provided in this subchapter;

(2) The denominations and sale of stamps;

(3) Any other matter or thing pertaining to the administration and enforcement of this subchapter.

30 Del. C. 1953, § 5407; 55 Del. Laws, c. 109, § 1; 57 Del. Laws, c. 741, § 17A.;

§ 5408. Failure to affix stamps.

No document upon which tax is imposed by this subchapter shall be recorded in the office of any recorder of deeds of any county of this State, unless proof of the payment of the realty transfer tax appears on the document as is provided in § 5405(a) of this title.

30 Del. C. 1953, § 5408; 55 Del. Laws, c. 109, § 1.;

§ 5409. Value to be stated in document or affidavit.

Every document when lodged with, or presented to, any Recorder of Deeds in this State for recording shall set forth therein and as a part of such document the true, full and complete value thereof, or shall be accompanied by an affidavit executed by a responsible person connected with the transaction showing such connection and setting forth the true, full and complete value thereof and the reason, if any, why such document is not subject to tax under this chapter; provided,

that in the case of a transaction exempt from tax under § 5401(1)p. of this title, the affidavit shall be made by the grantee.

30 Del. C. 1953, § 5409; 55 Del. Laws, c. 109, § 1; 62 Del. Laws, c. 316, § 3; 64 Del. Laws, c. 182, § 3;

§ 5410. Unlawful acts; penalty.

(a) It shall be unlawful for any person to:

(1) Make, execute, deliver, accept or present for recording or cause to be made, executed, delivered, accepted or presented for recording any document without the full amount of tax thereon being duly paid;

(2) Make use of any documentary stamp to denote payment of the realty transfer tax without cancelling such stamp as required by § 5405(a) of this title, or as prescribed by the Department of Finance;

(3) Fail, neglect or refuse to comply with or violate the rules and regulations prescribed, adopted and promulgated by the Department of Finance under the provisions of this subchapter;

(4) Fraudulently cut, tear or remove from a document any documentary stamp or other evidence of payment of the realty transfer tax;

(5) Fraudulently affix to any document upon which tax is imposed by this subchapter any documentary stamp or other evidence of payment of the realty transfer tax which has been removed from any other document upon which tax is imposed by this subchapter, or any documentary stamp or other evidence of payment of the realty transfer tax of insufficient value, or any forged or counterfeited stamp or other evidence of payment of the realty transfer tax or any impression of any forged or counterfeited stamp, die, plate or other article;

(6) Wilfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp, with intent to use or cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale, or give away any such altered or restored stamp to any persons for use, or knowingly use the same;

(7) Knowingly have in possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this chapter; provided, that the possession of such stamps shall be prima facie evidence of an intent to violate the provisions of this clause;

(8) Knowingly or wilfully prepare, keep, sell, offer for sale or have in possession, any forged or counterfeited documentary stamps; or

(9) Accept for recording in the office of any Recorder of Deeds any document upon which the realty transfer tax is imposed, without the proper documentary stamp or other evidence of payment of the tax affixed thereto, as required by this chapter and as is indicated in such document or accompanying affidavit.

(b) Whoever violates this section shall be fined not more than \$500 and imprisoned for not more than 1 year, or both.

(c) The Superior Court shall have jurisdiction over offenses under this section.

30 Del. C. 1953, § 5410; 55 Del. Laws, c. 109, § 1; 57 Del. Laws, c. 741, § 17A;

§ 5411. Failure to pay tax; determination; redetermination; review; interest.

Repealed by 68 Del. Laws, c. 187, § 18, effective Jan. 1, 1992.

§ 5412. Grantor to pay tax.

As between the parties to any transaction which is subject to the realty transfer tax imposed by this subchapter, in the absence of an agreement to the contrary, the burden for paying the tax shall be on the grantor.

30 Del. C. 1953, § 5412; 55 Del. Laws, c. 109, § 1.;

§ 5413. Refunds.

Repealed by 68 Del. Laws, c. 187, § 18.

§ 5414. Tax lien.

Chapter 29 of Title 25 shall not apply to taxes arising under this subchapter.

65 Del. Laws, c. 426, § 2.;

§ 5415. Distribution of tax receipts [But see 66 Del. Laws, c. 94, § 2, regarding possible contingent repeal of statute]

(a) The tax received under this subchapter shall be disbursed by the appropriate county Recorder of Deeds, or by the agent appointed pursuant to § 5406 of this title, as follows:

(1) Seventy-five percent to the Division of Revenue;

(2) Twenty-five percent to the State Treasurer to be deposited in a special fund for distribution to municipalities and counties in accordance with this section.

(b) There is created in the office of the State Treasurer a special fund for the credit and redistribution of the tax receipts disbursed to the State Treasurer pursuant to paragraph (a)(2) of this section; provided, however, that if, in state fiscal year 1988, 25 percent of the realty transfer tax receipts exceeds \$8,000,000, then the excess over that amount shall be disbursed by the State Treasurer to the Division of Revenue.

(c) The tax receipts disbursed to the State Treasurer pursuant to paragraph (a)(2) of this section, less any excess amount disbursed by the State Treasurer to the Division of Revenue pursuant to subsection (b) of this section, shall be distributed among the counties and municipalities in accordance with the following pro rata allocations:

Arden	0.0200%
Village of Ardencroft	0.0125%
Town of Ardentown	0.0125%
Town of Bellefonte	0.0400%
Town of Bethany Beach	0.1000%
Town of Bethel	0.0125%
Town of Blades	0.1500%
Town of Bowers Beach	0.0400%
Town of Bridgeville	0.2900%
Town of Camden	0.1900%

Town of Cheswold	0.0125%
Town of Clayton	0.2400%
Town of Dagsboro	0.0700%
City of Delaware City	0.4600%
Town of Delmar	0.2100%
Town of Dewey Beach	0.0400%
City of Dover	5.3700%
Town of Ellendale	0.0300%
Town of Elsmere	0.8500%
Town of Farmington	0.0125%
Town of Felton	0.0900%
Town of Fenwick Island	0.0300%
Town of Frankford	0.1600%
Town of Frederica	0.0700%
Town of Georgetown	0.4400%
Town of Greenwood	0.1300%
City of Harrington	0.0800%
Town of Hartly	0.0125%
Town of Henlopen Acres	0.0400%
Town of Houston	0.0400%
Kent County	7.1200%
Town of Kenton	0.0125%
Town of Laurel	0.8000%
Town of Leipsic	0.0400%
City of Lewes	0.5900%
Town of Little Creek	0.0125%
Town of Magnolia	0.0200%
Town of Middletown	0.2300%
City of Milford	1.3500%
Town of Millsboro	0.3500%
Town of Millville	0.0125%
Town of Milton	0.3400%
New Castle County	44.4800%
City of New Castle	0.6800%
City of Newark	2.4800%
Town of Newport	0.2100%

Town of Ocean View	0.1200%
Town of Odessa	0.0125%
City of Rehoboth Beach	0.4300%
City of Seaford	1.2650%
Town of Selbyville	0.3000%
Town of Slaughter Beach	0.0300%
Town of Smyrna	1.1100%
Town of South Bethany	0.0300%
Sussex County	11.9400%
Town of Townsend	0.0200%
Town of Viola	0.0125%
City of Wilmington	16.5550%
Town of Woodside	0.0125%
Town of Wyoming	0.1800%

Provided, however, regardless of the percentage allocations stated above, that each county and municipality shall receive a minimum payment of \$1,000; further provided, that the aggregate difference between the amounts determined by the percentage allocations for those recipients receiving such minimum payments and the total amount of all \$1,000 minimum payments shall be deducted pro rata from the payments made to those counties and municipalities receiving more than \$1,000, according to their percentage allocations and that such deduction shall be made in the disbursements to occur on or before the final distribution under this section.

(d) Except as provided in subsection (b) of this section, pro rata distributions to the counties and municipalities pursuant to this section shall be made on or before the fifteenth day of the month following the month in which the tax receipts are credited to the special fund established by subsection (b) of this section.

(e) Funds distributed to the counties and municipalities pursuant to this section may be used by the recipients for any object, program, function or purpose for which such recipient, or any officer, department, agency, board or commission thereof, is by law authorized or required to raise, appropriate or expend money; provided, however, that receipt of these funds shall not cause the recipients to be considered agencies, as defined in Chapters 63 and 65 of Title 29.

