

Transfer Taxes

What is the Real Estate transfer tax?

There is a State Tax and a Municipal Tax each amounting to 1% of the value of the property or interest being conveyed. This is not necessarily the sales price.

Who pays the transfer tax?

The state and local governments do not care who pays it as long as it is paid. The Recorder of Deeds Office will not accept a deed unless the tax is paid at the time of recording. In most sales agreements, the seller and the buyer split the tax. However, the new owner is responsible if there is any question over the amount of the tax paid.

Are any transactions exempt?

Some are. Conveyances between husband and wife, parent and child, grandparent and grandchild and brothers and sisters. There are some other exemptions allowed in certain situations. It is best to consult your attorney or contact our office concerning them. Note that non-profit corporations are NOT exempt. In most cases the transactions are taxable.

What is a statement of value?

This is a specific State form that is used either to set the value of the property being conveyed or to give the reason for exemption. It must be presented in duplicate and are forwarded by us to the Department of Revenue.

When is a statement of value required?

Anytime the transfer tax is not paid or anytime the true value of the land is not shown on the deed (such as in a \$1.00 consideration). State investigators then check the property and see if the value is as stated or if the reason given for exemption is valid.

Why is additional transfer tax sometimes due?

This happens when the state investigator determines the property being sold is worth more than stated or if the reason for exemption is not valid.

How is additional tax paid?

A "Determination" is sent directly to you by the State Department of Revenue. The additional State Tax and interest are paid to them. They issue a receipt to our office to be recorded showing the taxes that were due and paid.

Is a transfer between divorced parties exempt?

A deed between ex-spouses is exempt from the tax.

Pre-Registration in certain communities?

Deeds conveying property in any of the following municipalities MUST be registered with them prior to being presented for recording: Sellersville, Perkasio, Quakertown, New Britain, Newtown, Doylestown and Morrisville Boroughs and Buckingham, Doylestown, New Britain Townships, Lower Southampton, West Rockhill and Wrightstown Townships. We have supplied a Buckingham County Form. It would be best to call the Recording Dept of each municipality and see if they have their Preregistration Form.

§ 91.193. Transfer Tax Excluded transactions.

(a) Excluded parties. A transaction in which all parties are excluded parties under § 91.192(a) (relating to excluded parties) is excluded from tax.

(b) Additional exclusions. Other transactions which are excluded from tax include:

(1) A transfer to the United States or the Commonwealth or to an instrumentality, agency or governmental body of either if the transfer is:

(i) In lieu or confirmation of a taking by eminent domain. To qualify for the exclusion, the deed shall be made under a prior statute, ordinance, resolution, plan or order for the condemnation, appropriation or acquisition of the real estate transferred by condemnation or in lieu thereof. The statement of value accompanying a document that effectuates such a transfer shall contain a specific reference to the ordinance, resolution or other official action by which the grantee was authorized to file a declaration of taking of the transferred real estate.

(ii) By gift or dedication.

(iii) A reconveyance by the condemning body of the property condemned to the owner of record at the time of condemnation, which reconveyance may include property line adjustments, if the reconveyance is made within 1 year of condemnation.

(iv) Made under a judicial sale for the collection of taxes or a levy and seizure of property for the collection of taxes.

(v) Made under a mortgage foreclosure action.

(2) A document which the Commonwealth is prohibited from taxing under the Constitution or statutes of the United States, including:

(i) A transfer under a bankruptcy plan confirmed under section 1129 of the act of November 6, 1978 (Pub. L. No. 95-598) (92 Stat. 2549), known as the Federal Bankruptcy Act (Bankruptcy Act) (11 U.S.C. § 1129) and exempt under section 1146(c) of the Bankruptcy Act (11 U.S.C. § 1146(c)). To claim this exclusion, a copy of the order and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption. A transfer is made under a plan confirmed under section 1129 only when the transfer is authorized by the specific terms of a previously confirmed Chapter 11 plan.

(ii) A transfer under a bankruptcy plan confirmed under section 1225 of the Bankruptcy Act (11 U.S.C. § 1225) and exempt under section 1231(c) of the Bankruptcy Act (11 U.S.C. § 1231(c)). To claim this exclusion, a copy of the order and confirmed plan highlighting the specific provision in the plan authorizing the transaction and proof that the deed to be recorded was executed by the parties to the transaction subsequent to the plan confirmation shall accompany the statement of value. Transfers made prior to plan confirmation do not qualify for tax exemption. A transfer is made under a plan confirmed under section 1225 of the Bankruptcy Act only when the transfer is authorized by the specific terms of a previously confirmed Chapter 12 plan.

(iii) Transfers made under the authority of sections 363 or 365 of the Bankruptcy Act (11 U.S.C. § 363 or § 365) and occurring before the confirmation of a plan will not qualify for exemption under this paragraph. However,

transfers pursuant to sales authorized under these sections of the Bankruptcy Act may qualify for other exclusions. See paragraph (16).

(3) A conveyance to a local taxing authority under acquisition by the authority of a tax delinquent property at a sheriff sale or a tax claim bureau sale.

(4) A correctional deed or confirmatory deed. See § § 91.151 and 91.152 (relating to correctional deed; and confirmatory deed).

(5) A transfer of division in kind for no or nominal actual consideration of property passed by testate or intestate succession and held by cotenants. If any of the parties take shares greater in value than his undivided interest, tax is due on the excess. See § 91.159 (relating to transfers by will or intestate law).

(6) Transfers between certain family members:

(i) A transfer between any of the following:

(A) Husband and wife.

(B) A lineal ascendent—parent, grandparent, great grandparent and the like—and lineal descendent—child, grandchild, great grandchild and the like.

(C) Children of the same parent—siblings.

(D) A lineal ascendent—parent, grandparent, great grandparent and the like—of a child and the spouse of the child, unless the child is deceased and the child's spouse has remarried.

(E) An individual and the individual's sibling's spouse, unless the sibling is deceased and the sibling's spouse has remarried.

(F) Persons who were previously married but who have since been divorced, if the transferred realty was acquired by both spouses or by either spouse before or during their marriage

(ii) A subsequent transfer by the transferee within 1 year shall be subject to tax as if the original grantor was making the transfer to the transferee's grantee.

(iii) The estate of a deceased family member is not a family member for purposes of claiming the familial exemption under this paragraph.

Example: A and B, C's parents, transferred two lots to C and D, C's spouse. Within 1 year of that transfer, C and D conveyed one of the lots to E and F, D's parents, and the other lot to G, C's brother. The transfer to E and F is not excludable, because a direct transfer from A and B to E and F would have been taxable. The transfer to G is excludable, because the transfer between C and D and G is an excludable transfer between siblings and between a sibling's spouse and a sibling and because a direct transfer from A and B to G, their lineal descendent, would have been an excludable transfer.

(7) A transfer for no or nominal actual consideration of property passing by testate or intestate succession from a personal representative of a decedent to the decedent's devisee or heir. See § 91.159.

(8) A transfer to a trustee of an ordinary trust as provided in § 91.156(a) (relating to trusts).

(9) A transfer from a trustee of an ordinary trust as provided in § 91.156(d).

(10) A transfer which merely confirms the appointment of a successor trustee to fill a vacancy or an additional trustee or the removal or resignation of a trustee.

(11) A transfer for no or nominal actual consideration between principal and agent or straw party and a transfer between an agent or straw party and third party, where the transfer of the same realty would be excluded if the transfer were made directly between the principal of the agent or straw party and the third party. See § 91.153 (relating to principal and agent).

(12) A transfer under the statutory merger or consolidation of a corporation or statutory division of a nonprofit corporation if:

(i) The document merely confirms that an interest in real estate passed by operation of law to a nonprofit corporation under a statutory division of a nonprofit corporation. See 15 Pa.C.S. § 5957(b) (relating to effect of division).

ii) The document merely reflects that the corporation changed from a business corporation to a nonprofit corporation, or vice versa. See 15 Pa.C.S. § 5966 (relating to effect of conversion).

(iii) The document merely confirms that an interest in real estate passed by operation of law to a new or surviving corporation under a statutory merger or consolidation, unless the primary intent for the merger or consolidation is avoidance of the Realty Transfer Tax. See 15 Pa.C.S. § § 1929 and 4127 (relating to effect of merger or consolidation; and merger, consolidation or division of qualified foreign business corporations) and 15 Pa.C.S. § 5929(b) (relating to effect of merger or consolidation). In determining whether a merger or reorganization is undertaken to avoid tax, the Department will consider the following factors:

(A) Is one or more of the corporations which are parties to the reorganization a real estate company, an acquired real estate company, a family farm corporation or an acquired family farm corporation.

(B) Does the merger or consolidation, of itself or together with other changes in interest, have the effect of transferring directly or indirectly, 90% or more of the total ownership rights in the real estate company, acquired real estate company family farm corporation or acquired family farm corporation.

(13) Certain transfers to shareholders.

(i) A transfer from a corporation or association to its shareholder or member if:

(A) The transferred realty is held of record in the name of the corporation or association or is held of record in the name of an agent of the corporation or association who acquired the realty as agent for the corporation or association.

(B) The grantee owns stock of the corporation or an interest in the association in the same percentage as the grantee's interest in or ownership of the real estate being conveyed.

(C) The stock of the corporation or the interest in the association has been held by the grantee for more than 2 years.

(ii) In order to claim this exclusion, the statement of value shall identify the grantee as a stockholder in the corporation or as a holder of an interest in the association, set forth the date of acquisition of the stock or interest and indicate the grantee's ownership share of the corporation or association.

Example: E and F each owned 50% of the stock in corporation G. On partial liquidation of corporation G, G's real estate is distributed to E. If E held his stock for more than 2 years, the real estate distribution is taxable only to the extent of F's proportionate interest in corporation G.

(14) A transfer from a nonprofit industrial development agency or authority to a grantee of property conveyed by the grantee to that agency or authority as security for a debt of the grantee or a transfer to a nonprofit industrial development agency or authority. See § 91.158 (relating to industrial development authorities and agencies).

Example: In an industrial development agency transaction, C enters into a contract for the improvement of a manufacturing plant. C transfers the plant realty to the IDA, which borrows money to finance the improvements. The IDA leases back the realty to C, or sells the realty back to C under an installment-sale contract. C's payments to the IDA under the lease or installment-sale contract are sufficient to enable the IDA to recover its financing costs. Title to the improved realty is transferred back to C at the end of the lease term or installment-sales agreement payment term.

(15) A transfer from a nonprofit industrial development agency or authority to an industrial enterprise purchasing directly from it. See § 91.158.

(16) A transfer to a holder of a bona fide mortgage in default if the transfer is made in lieu of foreclosure or the transfer is made under a judicial sale in which the mortgage holder is the purchaser. The exemption granted by this section does not apply to a transferee or assignee of the bid or other rights of the holder in the judicial sale. To claim this exemption the statement of value shall indicate the mortgage book volume and page where the mortgage is recorded.

(17) A transfer between religious organizations if:

(i) Both the grantor and grantee are either a religious or apostolic association or corporation or a nonprofit corporation, fund or foundation founded, endowed and maintained by, and devoted to the interest of, a religious sect or a trustee holding property for the use of a religious sect and both possess tax exempt status under section 501(c)(3) or (d) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3) or (d)).

(ii) The grantor may not have used the property transferred for commercial purposes. Property of a kind which is commonly used by commercial enterprises for the production of income, such as health care, educational and day care facilities, camp or burial grounds, museums and parks, and farm land, and bakery, kitchen, parking or publication facilities is rebuttably presumed to be used for commercial purposes, unless the income produced from the use of it is merely incidental and nominal and sufficient to defray only the cost of operating the facility, grounds, museum, park or farm.

(18) A transfer to a conservancy, a transfer from a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions, or a transfer from a conservancy if the real estate is

encumbered by a perpetual agricultural conservation easement as defined by the Agricultural Area Security Law (3 P. S. § § 901—915) and the conservancy has owned the real estate for at least 2 years immediately prior to the transfer.

(19) A transfer of real estate devoted to the business of agriculture to a family farm corporation by a member of the same family which directly owns at least 75% of each class of the stock thereof.

(20) Transfers of interest in a real estate company between members of the same family. See § 91.202(c) (relating to acquired real estate company).

(21) A transaction when the true, full and complete value of the interest in real estate evidenced by the document is \$100 or less.

(22) Leases for the production or extraction of coal, oil, natural gas or minerals and assignments thereof. See § 91.169 (relating to conveyances of coal, oil natural gas or minerals).

(23) A financing transaction evidenced by a deed of trust, defeasible deed or other instrument of like character given as a security for a debt, a lease to the debtor or a deed of release.

Example. A transfers title to real estate to B in exchange for a cash payment. As part of the same transaction, B immediately leases back the real estate to A for 30 or more years. A's rental payments under the lease are sufficient to allow B to recoup his entire cash payment to A plus interest on the cash payment. A has the right to repurchase the real estate from B for a nominal amount at the end of the lease term. Neither the sale nor the lease is subject to tax.

(24) A real estate lease or occupancy agreement, unless one of the following applies:

(i) The lease or occupancy agreement is for a term of 30 years or more.

(ii) Gain or loss is realized on the lease transaction by the lessor for Federal income tax purposes and the rentals and other payments required to be made as a condition to continued use or possession are not deductible by the lessee as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business under section 162(a) of the Internal Revenue Code (26 U.S.C.A. § 162(a)) and are recoverable by the lessee through allowances for depreciation or amortization for Federal income tax purposes.

(iii) The lease or occupancy agreement is perpetual or otherwise approximates a perpetual lease.

(iv) The lease does not constitute an excludable lease under § 91.168 (relating to sale and leaseback transactions).

(v) In determining the term of a lease under this paragraph, it shall be presumed that a right or option to renew or extend a lease will be exercised if the lessor and lessee cannot renegotiate the rental charges for the renewal or extension period unconditionally. A lessor and lessee cannot renegotiate a rental charge unconditionally if it is fixed at a set amount for the period or a method for establishing the rental charges is established. Renewals or extensions at the option of the lessee at fair rental value at the time of the renewal or extension are not included in determining the term of a lease.

(25) 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.

(26) The rescission, cancellation or abandonment of an existing lease or contract for a deed if the rescission, cancellation or abandonment is for no or nominal consideration or the remaining term of the lease or contract is less than 30 years. The remaining term of the lease or contract shall be determined under paragraph (24)(v).

(27) A sublease or the assignment of a lessee's rights under an existing lease, unless the lessee is released from performance under the lease by the lessor.

Example 1: 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 2: 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. If the unexpired term of the lease is 30 years or more or the assignee obtains an equity interest in the premises under the assignment, the assigned lease is subject to tax.

(28) Transfer of an easement to a person furnishing public utility service, if the easement is used in, or useful for, furnishing public utility services.

(29) A contract for a deed in which the legal title does not pass to the purchaser until the total consideration specified in the contract has been paid, unless the following apply under the contract:

- (i) The purchaser obtains or retains possession of the realty.
- (ii) The consideration is payable over a period of time exceeding 30 years.

(30) The assignment of a buyer's rights, under a contract for a deed, unless the buyer is released from performance under the agreement by the seller.

(31) A transaction evidenced by a document made, acknowledged and accepted prior to February 15, 1951.

(32) Transfers to the trustee of a living trust as provided in § 91.156(c).

(33) Transfers from the trustee of a living trust as provided in § 91.156(e).

(34) Transfers from the trustee of a testamentary trust or living trust after the death of the settlor as provided in § 91.156(f).

(c) Documents that convey or evidence the transfer of real estate between the parties involved in the transactions enumerated in subsection (b) are excluded from tax. Subsection (b) has no application to acquisitions of real estate companies as provided in § 91.202 (relating to acquired real estate company).