

Chapter Tax 15

REAL ESTATE TRANSFER FEE

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Tax 15.01 Definition of a conveyance. (s. 77.21, Stats.) Option contracts or agreements that provide for the right of first refusal of purchasing an interest in real estate are not conveyances within the scope of s. 77.21 (1), Stats.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

Tax 15.02 Value subject to real estate transfer fee. (s. 77.21, Stats.) (1) The conveyance of a parcel of real property by a partner to a partnership is subject to both real estate transfer fee and return.

(2) In an exchange of real properties, 2 separate and distinct conveyances are involved and the value should be separately determined for each.

Example: If (i) 'A' conveys a parcel X of real property worth \$50,000 to 'B,' and (ii) 'B' in turn conveys a parcel Y of real property worth \$45,000 plus cash of \$5,000 to 'A,' both conveyances are taxable under s. 77.22 (1), Stats., and a return is required to be submitted for each conveyance. The basis of the real estate transfer fee for conveyance (i) is \$50,000 and for conveyance (ii) is \$45,000. Therefore, the real estate transfer fee for conveyance (i) is \$150 and that for conveyance (ii) is \$135.

Note: The December, 1992 amendment of sub. (1) is necessitated by a March 25, 1992 court of appeals, district II decision of *Wisconsin Department of Revenue v. Mark*, which overruled department of revenue policy as stated in the rule which imposes the transfer fee on an amount less than provided for by s. 77.21 (3), Stats. As a result of that decision, this section shall have an effective date of March 25, 1992.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82; am. (1), Register, December, 1992, No. 444, eff. 1-1-93.

Tax 15.03 Imposition of real estate transfer fee. (s. 77.22 (1), Stats.) A real estate transfer fee is imposed on the grantor of real estate on every conveyance not exempted under s. 77.25, Stats. Real estate conveyances which are taxable under s. 77.22, Stats., include:

(1) Corporation conveyances:

(a) From a corporation to a partnership, and from a partnership to a corporation.

(b) From an individual to a corporation, and from a corporation to an individual.

(c) From a corporation to its stockholders pursuant to a plan of liquidation.

(d) From one corporation to another, both of which have the same parent corporation, that is, conveyances between "sister" corporations.

(e) From a corporation to another caused by a "spin-off." A spin-off occurs when, after a part of the assets of corporation 'A' is transferred to corporation 'B' controlled by the transferrer 'A,' stock or securities in

the latter 'B' are distributed to the shareholders of the controlling corporation 'A,' without a surrender by corporation 'B's' shareholders of any of their stock or securities.

(f) From a corporation to another caused by a "split-up." In a split-up the distributing corporation 'A' transfers its assets to 2 or more newly created corporations in exchange for their stock and effects a complete liquidation, 'A's' shareholders receiving stock in the new corporations in exchange for the distributing corporation's stock.

(g) From one corporation to another pursuant to any bankruptcy provision.

(h) From a parent corporation to a subsidiary corporation in exchange for stock.

(2) Conveyances by means of a sheriff's sale:

(a) Where the grantee is third party with no prior interest in the deed or mortgage.

(b) Where the mortgagee (lender) purchases the property for less than the amount of the lien and demands a deficiency judgment in addition to the sale proceeds.

(c) Where the mortgagee (lender) purchases the property for more than the amount of the lien.

(3) Conveyances of real property between stepchildren, natural children or stepparent and stepchild.

(4) Conveyances by dissolution of a partnership.

(5) Conveyances between an individual and a tax-exempt organization.

(6) Conveyances of timber or mineral rights.

(7) Court ordered conveyances by a county to satisfy an old age assistance lien.

(8) Conveyances of a remainder interest in real property.

(9) Conveyances of real property from a trustor to a trustee.

(10) Bankruptcy court ordered conveyances.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

Tax 15.04 Land contracts. (s. 77.22 (2), Stats.) (1) ORIGINAL LAND CONTRACT. Any original contract or any instrument evidencing the existence of a land contract, either of which indicates that such original land contract was made on October 1, 1969 or thereafter, requires the submission of a return as a condition to recording by the register of deeds. However, no fee is imposed at time of such recording.

(2) DEEDS IN FULFILLMENT OF A LAND CONTRACT. (a) Any deed or other instrument executed in fulfillment of a land contract, which land contract is dated December 17, 1971, or thereafter, requires the submission of a return and payment of the fee provided by s. 77.22 (2) (b), Stats., as a condition to recording. The return must show that the deed is given in satisfaction of a land contract and the fee is based on the purchase price established by the terms of land contract.

(b) Deeds in fulfillment of recorded land contracts dated prior to December 17, 1971 are not subject to the fee. As a result of the changes made by Chapter 150, Laws of 1971, deeds presented allegedly in fulfillment of an unrecorded land contract dated prior to December 17, 1971 should not be recorded as exempt until the land contract or evidence of the existence of a land contract is recorded. This is necessary to establish that the land contract was in fact dated prior to December 17, 1971.

(3) **SALE OF A LAND CONTRACT VENDEE'S INTEREST.** A sale or assignment of a vendee's interest which is dated October 1, 1969, or thereafter is subject to both the fee and return as a condition to recording.

(4) **SALE OF A LAND CONTRACT VENDOR'S INTEREST.** A deed which transfers the interest of a vendor in a land contract to another person is excluded from the provisions of s. 77.22 (2), Stats. It is therefore not subject to the transfer fee. Under the doctrine of equitable conversion the vendor's interest in the land contract becomes personal property. Such a transfer is not a conveyance within the definition of s. 77.21 (1), Stats., because it does not provide for the passage of ownership interest in real estate.

Note: See *Mueller v. Novelty Dye Works* (1956), 273 Wis. 501, 78 N.W. 2d 881.

(5) **RECORDING OF A DEED ISSUED IN PARTIAL SATISFACTION OF AN ORIGINAL LAND CONTRACT.** The basis of the real estate transfer fee shall be prorated in proportion to the area covered by the deed.

Example: If a land parcel of 40 acres was sold under an original land contract for \$80,000, and subsequently a deed was issued in partial satisfaction of this land contract for \$4,500, and the area covered by the deed issued in partial fulfillment of the land contract was 5 acres, the real estate transfer fee is based upon 5/40 of \$80,000 or \$10,000.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

Tax 15.05 Exemption from fee. (s. 77.25, Stats.) Conveyance of real property pursuant to any of the exemptions listed in s. 77.25, Stats., are not subject to the payment of real estate transfer fee except that returns are required at the time of recording.

(1) Conveyances from the United States, its agencies or instrumentalities are not subject to the fee imposed under s. 77.22 (1), Stats.

(2) Conveyances from the state, its instrumentalities, agencies and subdivisions are not subject to the fee imposed under s. 77.22 (1), Stats.

(3) A certificate of termination issued by the county court upon petition by interested persons in the realty upon the death of a person holding a life estate in real property or upon the death of a person who is a joint tenant in real property would be a conveyance as defined in s. 77.21 (1), Stats., since it transfers an interest in real estate. This conveyance is exempt from the real estate transfer fee by virtue of s. 77.25 (11), Stats., as a conveyance by descent or survivorship.

(4) Conveyances between husband and wife pursuant to a divorce decree are not subject to the fee but a return must be submitted. The value of property transferred shall be stated on the real estate transfer return.

(5) Conveyance by means of a sheriff's sale when the mortgagee (lender) bids the amount of the lien to obtain the property is not subject to the fee imposed under s. 77.22 (1), Stats.

(6) Conveyances of cemetery lots, as distinct from land conveyed for use as a cemetery, are not subject to s. 77.22 (1), Stats.

History: Cr. Register, December, 1981, No. 312, eff. 1-1-82.

Tax 15.06 Inspection of real estate transfer returns. (s. 77.23 (2), Stats.) A taxpayer or agent in a condemnation proceeding or an appeal from an assessment of real property will be allowed to inspect all returns. The taxpayer or agent requesting access to this information shall maintain the confidentiality of the return.

History: Cr. Register, July, 1982, No. 319, eff. 8-1-82.