

PROPERTY TRANSFER TAX REGULATIONS

REG. SEC. 1.9601 STATUTORY PROVISIONS; PROPERTY TRANSFER TAX DEFINITIONS. [32 V.S.A. SEC. 9601]

Reg. Sec. 1.9601(1)-1 (Effective 08/03/79); formerly 3371-1(a)(1), dated 02/01/68) Definition of "Deed".

(a) General definition. The term "Deed" includes any deed, instrument, bill of sale, or other writing evidencing a transfer of title to real property. Such term also includes a sheriff's Deed and the Deed of a guardian, trustee, executor, or administrator, as well as an order or decree of a board, commission, or court evidencing a transfer of title to real property. Deeds to cemetery plots are not included in the term.

(b) Installment sales. Installment agreements for the purchase of real property which effectively create an equity of redemption in the purchaser will be considered Deeds when recorded with the town clerk unless the transfer of title itself is delayed by the agreement and the purchaser has no right of possession under the agreement. If an agreement is treated as a Deed at the time of recording under this subsection, the later recording of a Deed to the property under the agreement will not be subject to the transfer tax. See Reg. Sec. 1.9606-1(g) concerning the property transfer return to be filed when an installment agreement is treated as a Deed.

(c) Mobile Homes. Bills of sale, deeds, or other instruments evidencing transfer of title to mobile homes treated as real property under Reg. Sec. 1.9601(10)-1 are included in the definition of Deed.

Reg. Sec. 1.9601(3)-1 (Effective 08/03/79); Definition of "Title to Property" - Transfer of Building on Leased Land.

The term "Title to Property" includes those interests in real property which approximate an estate in fee simple under 32 V.S.A. Sec. 9601(3). The transfer of a building on leased land through a bill of sale or Deed will be considered the transfer of title to real property even though the land is not also transferred.

Reg. Sec. 1.9601(5)-1 (Effective 08/03/79) Definition of "Transfer" - "Primary Obligee" in Foreclosure Situations.

The term "Primary Obligee" is defined as the person acquiring title to real property as a result of foreclosure or voluntary conveyance in lieu of foreclosure.

Reg. Sec. 1.9601(6)-1 (Effective 08/03/79; formerly 3371-1(a)(2), dated 02/01/68; 1.9603(7)-1 and -2, effective 06/30/76; 3371(6)-1, dated 01/02/68) Definition of "Value".

(a) Nominal consideration. A transfer for nominal consideration occurs when the sales price of

the real property is significantly less than its fair market value.

(b) Exclusion of alternative energy sources.

(1) Alternative energy sources. Alternative energy sources are excluded from the definition of Value under Section 9601(6) by reference to 32 V.S.A. Sec. 3845. For the alternative energy plant, structure, or facility to be excluded from the definition of Value, it must:

(A) generate electricity or produce energy which is:

- (i) used on the premises for private, domestic, or agricultural purposes, and
- (ii) not used for sale to or exchange with the public, or

(B) collect and/or store energy, or

(C) convert organic matter to methane or another usable form of fuel.

(2) Land upon which facility is located. Up to one-half acre of land may also be excluded from Value if the alternative energy source as described in paragraph (1) above is located upon it. For land to be excluded from Value, the facility must be the exclusive structure on that portion of the land and must not be incorporated into a structure used for living purposes or purposes other than the generation, collection, or conversion, etc., of energy.

(c) Foreclosures and voluntary conveyances in lieu of foreclosure.

(1) Foreclosure sales. The Value of property acquired in a foreclosure sale will be the bid price plus any existing liens or encumbrances not removed by the foreclosure sale. The right of the United States to redeem the property after sale under 28 U.S.C. Sec. 2410(c) shall not be considered a lien or encumbrance for the purposes of the preceding sentence. If the bid price is nominal, the Value will be the fair market value at the time of sale.

(2) Strict foreclosures and voluntary conveyances in lieu of foreclosure. The value of property acquired in a strict foreclosure action or by voluntary conveyance in lieu of foreclosure will be the sum of:

(a) The outstanding principal sum owed to the acquiring party plus

(b) Amounts paid by the acquiring party to others to discharge their interests in the property, plus

(c) Liens and encumbrances assumed by the acquiring party, plus

(d) Amounts paid to the mortgagors by the acquiring party to acquire title.

(d) Perpetual easements granted to utilities. When a perpetual easement is transferred to a public utility for nominal consideration as a condition of service to a customer, the Value of the easement

shall be deemed to be \$1.00.

See Reg. Sec. 1.9606-1(f) for details on reporting such a transfer on the property transfer return.

Reg. Sec. 1.9601(10)-1 (Effective 08/03/79) Definition of "Property"-mobile homes.

The term "Property" includes mobile homes which have effectively become real property because they are affixed to the land. Factors which tend to show that the mobile home has become affixed to the land include, but are not limited to, some or all of the following:

- (1) The mobile home has been set up on blocks or otherwise stabilized so that the wheels do not form a major part of the structural support;
- (2) The mobile home has been connected to utilities such as electricity, sewage, water, gas, or oil;
- (3) Skirting has been erected around the base of the mobile home;
- (4) The wheels and/or tires have been removed;
- (5) The mobile home has been situated in a place which makes its removal unlikely.

See Reg. Sec. 1.9601(1)-(1(c) concerning what constitutes a Deed to a mobile home.

REG. SEC. 1.9603 STATUTORY PROVISIONS; EXEMPTIONS FROM PROPERTY TRANSFER TAX. [32 V.S.A. SEC. 9603]

Reg. Sec. 1.9603(2)-1 (Effective 08/03/79) Exemption for Transfers to Governmental Entities.

(a) In general. Transfers to the United States of America, the State of Vermont, or any of their instrumentalities, agencies, or subdivisions (including Vermont towns) are exempt from the property transfer tax. Transfers from these entities are not exempt under this section.

(b) Federal instrumentalities. The exemption provided for transfers to the federal government or its instrumentalities is intended to exempt only those federal agencies which cannot be subjected to a state tax under federal law and the U.S. Constitution. The following are general, advisory guidelines for determining whether an organization is a federal instrumentality;

- (1) The activities of the organization are within the authority of its enabling legislation, as enacted by Congress.
- (2) The organization is not engaged in commercial activity for the private profit of its owners or members (other than the United States).
- (3) The federal government holds all, or substantially all, of the ownership of the organization.

(4) The federal government, or its appointees, directly controls the activities of the organization.

(5) The federal government contributes significant financial aid to the organization, either at the inception of the organization or as it operates.

(6) Congress intended the organization to be immune from taxation.

Reg. Sec. 1.9603(5)-1 (Effective 08/03/79) Exemption for Property Transferred Between Related Persons Without Actual Consideration - Transfer From an Estate.

A transfer of real property from an estate (through an executor's or administrator's deed or by court decree) to a beneficiary of the estate will be exempt from the property transfer tax only if the beneficiary was related to the decedent as husband, wife, parent, child, grandparent or grandchild, and only if the transfer occurs without actual consideration. Adopted children and stepchildren shall be considered blood relations in examining the preceding relationships.

Reg. Sec. 1.9603(5)-2 (Effective 08/03/79) Exemption for Transfers in Trust Without Actual Consideration.

(a) Transfers in trust. Transfers of real property in trust, without actual consideration, are exempt from the property transfer tax to the extent the transfer is to the benefit of the donor or a person related to the donor as husband, wife, parent, child, grandparent, or grandchild adopted children and stepchildren shall be considered blood relations in examining the preceding relationships.

The phrase "benefit to the donor" in 32 V.S.A. Sec. 9603(5) means that the equitable interest in the land must remain in the donor (or above-mentioned relations) and that the equitable interest retained be of the same type and quality which the donor previously owned outright.

To the extent that actual consideration passes to the donor or to the extent that the equitable interest reserved for the donor (or above-mentioned relations) does not coincide with the benefits enjoyed by the donor before the transfer, the transaction shall not be considered to be a transfer in trust to the benefit of the donor. Basically, only legal title can be transferred to the trust; the equitable interest must remain in the donor (or in one or more of the above-mentioned relations) for the transaction to be non-taxable.

"Equitable interest" is defined as the right to control, use, possess, or occupy the property.

(b) Transfers from a trust. Transfers from a trust described in subsection (a) which convey or release real property free of trust to persons related to the donor as described in subsection (a) are exempt from the property transfer tax to the extent so transferred without actual consideration.

Reg. Sec. 1.9603(8)-1 (Effective 08/03/79) Exemption for Transfers by Partition Without Actual Consideration.

Transfers by partition among co-owners of joint tenancies, tenancies in common, or tenancies by the entirety are exempt from the property transfer tax as long as no consideration is exchanged and upon the condition that the property transferred to each owner represents that owner's proportionate interest in the property. For example, two individuals who paid equal amounts to purchase real property and who take title as tenants in common may divide the property, and the transfer will be exempt if each receives property equal in value to half the value of the entire property. If one co-tenant received property worth more than half of the entire property's value, the transfer of value in excess of half the total value would not be exempt under this section. Similarly, if part of the property is sold and part retained upon the partition, the part sold would not be exempt.

REG. SEC. 1.9605 STATUTORY PROVISIONS; PAYMENT OF TAX. [32 V.S.A. SEC. 9605]

Reg. Sec. 1.9605-1 (Effective 08/03/79; formerly 3375-1, -2 and -3, dated 01/02/68) Payment of Tax.

(a) Property lying in two or more towns. In the case of a transfer by Deed of title to property which overlaps two or more towns, the full amount of the tax imposed on the transfer shall be paid to the clerk of the town in which the Deed is first delivered for recording, regardless of the fact that some of the property transferred does not form part of that town. No further tax will be due upon subsequent recordings of the same Deed in the other towns in which the property lies, provided a properly acknowledged property transfer return is presented as proof of prior payment.

(b) Record in county clerk's office. No property transfer tax shall be payable to a county clerk upon the additional recording of a Deed in accordance with 27 V.S.A. Sec. 402 if the property transfer tax in respect of that Deed has already been paid, as evidenced by a properly acknowledged property transfer return.

(c) Vouchers. Property transfer tax payment vouchers issued by the Department of Taxes, when properly completed by the taxpayer, shall be accepted by town clerks as evidence of payment of equivalent property transfer tax liability.

The Department of Taxes shall refund the face value of any property transfer tax payment voucher which has not been used as evidence of payment of property transfer tax when it is returned to the Department by the taxpayer to whom it was originally issued.

REG. SEC. 1.9606 STATUTORY PROVISIONS; PROPERTY TRANSFER RETURN. [32 V.S.A. SEC. 9606]

Reg. Sec. 1.9606-1 (Effective 08/03/79; formerly 3376(a)-1 and -2, dated 01/02/68; 1.9606(b)-1 and -2, effective 08/18/73) Property Transfer Return.

(a) Content of return. The property transfer return shall be in such form as the Commissioner shall, from time to time, designate. The return shall bear certificates as required by 32 V.S.A. Secs.

9606 and 9608.

(b) Returns covering more than one Deed. When two or more Deeds are executed simultaneously in a transaction which effectively results in only a single conveyance to one or more transferees, one property transfer return may be filed in respect of the deeds.

For example, in the creation of a joint tenancy or tenancy by the entirety through the use of a straw conveyance, or in certain sale-leaseback arrangements, the actual conveyance to the ultimate transferees must be the subject of the property transfer return.

(c) Submission of acknowledged property transfer return upon additional recording. When a deed is presented to a town clerk for additional recording, the transferee's copy of a previously acknowledged property transfer return shall be submitted to the town clerk in lieu of filing a new property transfer return. Following the acknowledgement by the town clerk of the copy of the Deed presented for additional recording, the transferee's copy of the return shall be returned to the person who submitted it.

(d) Oath or affirmation. The oaths or affirmations required by 32 V.S.A. Sec. 9606(b), (c) and (e) shall be self-administered by the persons who sign them. No additional acknowledgment, certificate or jurat need be completed in order for the oaths or affirmations to be effective.

(e) Effect of divorce decree.

(1) Where real property located in Vermont is transferred from one spouse to the other spouse pursuant to a Vermont decree of divorce or pursuant to a decree of divorce of a foreign jurisdiction recognized in Vermont, such decree of divorce will negate the necessity of obtaining the signature of the transferor spouse, provided that the transfer takes place within one year from the transferee pursuant to the decree of divorce must sign the property transfer return.

(2) Where a decree of divorce requires that one spouse execute a deed in favor of the other spouse conveying real property located in Vermont, both the transferor and the transferee are required to sign the property transfer return.

(f) Public utility easements. When a perpetual easement is transferred to a public utility for nominal consideration as a condition of service to a customer, the Value of the transfer is deemed to be \$1.00 under Reg. Sec. 1.9601(6)-1(d). In such a case, the property transfer return must state that the easement was a condition of utility service in the section headed "Special Circumstances".

(g) Installment sales. When an installment agreement is treated as a Deed under Reg. Sec. 1.9601(1)-1(b) because it effectively creates an equity of redemption in the purchaser, the return should state that the installment agreement was filed as a Deed in the section headed "Special Circumstances."

REG. SEC. 1.9607 STATUTORY PROVISIONS; ACKNOWLEDGMENT OF RETURN AND TAX PAYMENT. [32 V.S.A. SEC. 9607]

Reg. Sec. 1.9607-1 (Effective 08/03/79; formerly 3377-1 and -2, dated 01/02/68) Acknowledgment of return.

(a) Form of acknowledgment

(1) Deed acknowledgment. The acknowledgment, required by 32 V.S.A. Sec. 9607 to be affixed to a Deed, shall be the following impression of a rubber stamp, when properly completed by the town clerk:

(2) Return acknowledgment. The acknowledgment required by 32 V.S.A. Sec. 9607 to be affixed to the return appears on the return.

(b) Acknowledgment of Deeds additionally recorded. A town clerk should not acknowledge a Deed unless satisfied that the transfer evidenced by that Deed is fully covered by an acknowledged property transfer return submitted in accordance with Reg. Sec. 1.9606-1(b) or (c). No additional acknowledgment of the property transfer return need be provided to the transferee if the property transfer tax has already been paid.

(c) Installment sales. When an installment agreement is treated as a Deed under Reg. Sec. 1.9601(1)-1(b), the installment agreement shall be acknowledged by the town clerk as in subsection (a) above. A subsequent recording of the Deed shall be acknowledged by the town clerk if satisfied that the property transfer tax was paid (i.e., by reference to the acknowledged installment agreement).

REG. SEC. 1.9611 STATUTORY PROVISIONS; REGULATIONS IMPLEMENTING PROPERTY TRANSFER TAX. [32 V.S.A. SEC. 9611]

Reg. Sec. 1.9611-1 (Effective 08/03/79) Appeals procedure.

If the Commissioner finds that any taxpayer has failed to discharge in full the amount of any property transfer tax, or that a penalty or interest should be assessed, the Commissioner (or the Commissioner's delegate) shall notify the taxpayer of the deficiency and the penalty and interest as the case may be, by mail. Upon receipt of a notice of deficiency or assessment of penalty or interest, the taxpayer may, within thirty (30) days after the date of the notice, petition the Commissioner in writing for a determination of that deficiency or assessment. The Commissioner will thereafter grant a hearing upon the matter and notify the taxpayer in writing of the Commissioner's determination.