



STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
DELAWARE STATE BUILDING  
820 N. FRENCH STREET  
WILMINGTON, DELAWARE 19801

TECHNICAL INFORMATION MEMORANDUM 84-4

October 10, 1984

SUBJECT: Realty Transfer Tax

A complete set of regulations for the realty transfer tax, Chapter 54, Title 30, Delaware Code, are issued and published by the Division of Revenue. A copy is enclosed.

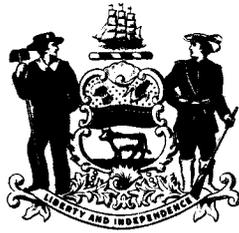
Additional copies are available for \$3 (\$2 each plus \$1 each for postage and handling if mailed).

*Robert W. Chastant*

Robert W. Chastant  
Director of Revenue

Enc.

State of Delaware



**REALTY  
TRANSFER TAX  
REGULATIONS**

As of June 1, 1984

Issued by:  
Division of Revenue  
820 North French Street  
Wilmington, Delaware 19801

## TABLE OF CONTENTS

Section	Page
1 GENERAL	1
2 DEFINITIONS	2
3 EXEMPTIONS	6
4 TAXABLE TRANSACTIONS AND PARTIES	7
5 ADMINISTRATIVE AND PROCEDURAL PROVISIONS	11

**REGULATIONS  
REALTY TRANSFER TAX  
CHP. 54, TITLE 30, DEL. CODE**

**Section 1: GENERAL**

- 1.1 Authority - These regulations are issued under the Act of August 1, 1965 known as the "Realty Transfer Tax" (30 Del. C., §§5401-5413). Section 5407 therein provides that "the Department of Finance shall enforce this chapter and may adopt and enforce rules and regulations relating to:... (3) any other matter or thing pertaining to the administration and enforcement of this chapter."
- 1.2 These regulations supersede all prior regulations in connection with the Realty Transfer Tax to the extent inconsistent therewith.
- 1.3 The tax is imposed on real estate transactions at the time of the making, execution, delivery, acceptance or presenting for recording of documents transferring the property. The tax is on the value of the real property or any interest therein transferred. The rate is two percent (2%) of the value of the property transferred.

**Section 2: DEFINITIONS**

- 2.1 As used in this chapter, except where the context clearly indicates a different meaning:
- (a) "ACT" means Title 30 of the Delaware Code, Chapter 54, The Realty Transfer Tax.
- (b) "CORPORATION" means a corporation or joint stock association or any association which is taxable as a corporation under the federal income tax laws.
- (c) "DOCUMENT" includes any deed, instrument or writing which transfers or conveys any real estate or interest therein (said real estate or interest therein being situated in the State of Delaware) by way of quit-claim, grant, bargain, sale, exchange, or other conveyance to the grantee, purchaser, or other person.
- An agreement of sale is not within the meaning of "document".
- Quit-claim deeds are documents.
- An instrument providing for the creation or transfer of easements, rights of way, and servitudes is included in the term "document", but instruments providing for revocable licenses to use are not. For example, instruments creating or transferring a license for the use of utility

service lines are not documents for the purposes of this act. An option for the purchase of real property shall not be included in the term "document".

Wills and mortgages, as well as leases not covered by §5401 (4) are not included in the term "document". See §4.2(a) of these regulations for an explanation of the taxability of certain leases.

- (d) "PERSON" means every natural person, association or corporation. Whenever used in any clause prescribing and imposing a fine or imprisonment or both the term "person" as applied to associations shall include the partners or members thereof; as applied to corporations the responsible officers thereof.
- (e) "REAL ESTATE BROKER" means any person certified as such by the Delaware Real Estate Commission and engaged in the real estate business.
- (f) "REAL ESTATE OR INTEREST THEREIN" means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments which are located in whole or in part in the State of Delaware. The term does not include a mortgage or a release of mortgage. The term includes an easement and a life estate, but not a license for the use of real property which confers a privilege of use conveying an interest or estate therein. The estate granted need not take place upon conveyance but may be postponed to a future time, as where a grantor grants a remainder to another to take effect upon the termination of a precedent life estate conveyed at the same time. In appropriate cases the Internal Revenue Code of 1954 mortality tables may be used. Deeds to burial sites which do not convey title to land, but only a right to sepulchre, to erect monuments, and the like do not represent real property or interests therein and are therefore not subject to the tax.
- (g) "TRANSACTION" means the making, executing, delivering, accepting, or presenting of a document for recording.
- (h) "VALUE" can carry distinct interpretations under the act.

- (1) Where actual consideration is received, "value" means the amount of the consideration paid or required to be paid, including in this amount any liens, encumbrances or ground rents on the property. Should the said liens, encumbrances or ground rents be applicable to, or chargeable against other lands, tenements or hereditaments in addition to the real property described in the taxable document, then the amount represented by these liens, encumbrances or ground rents shall be appropriated and applied in accordance with that part of the entire parcel represented by the real property described in the taxable document.
- (i) Liens, encumbrances or ground rents - In applying the provisions of this paragraph relating to the inclusion of "liens, encumbrances or ground rents" remaining on the property being transferred, the "value" of the property shall be computed by the price plus the actual value of such liens, encumbrances or ground rents remaining thereon at the time of transfer and which the transferee obligates himself to pay as part of the total consideration. The amounts of prior liens and prior encumbrances, for which payment is assumed by the purchaser as part of the total consideration paid for the real estate conveyed shall be taken at their face value unless it can be shown that the actual amount due thereon is a lesser amount, in which event the lesser amount shall be used.
- (ii) The provisions of this subparagraph may be illustrated by the following example.
- EXAMPLE:  
 Sale of real property for \$14,000 subject to a mortgage on which there is a balance of \$6,000. There are prior judgments assessed in the amount of \$900 and other assessments amounting to \$400 which are due and payable at the time of sale. The grantee assumes the obligation of paying such mortgage, taxes and assessments as part of the total consideration.
- |                         |           |
|-------------------------|-----------|
| Sale Price .....        | \$14,000. |
| Mortgage .....          | 6,000.    |
| Judgments .....         | 900.      |
| Other Assessments ..... | 400.      |
| Value ..                | \$21,300. |
- (2) In the case of a gift, or any other document without consideration or reciting nominal consideration, "value" shall be the actual monetary worth of the property which is conveyed, but shall in no event be less than the amount of the highest assessment of such real property for local tax purposes. In the event of a gift or document without consideration, in which "value" is construed as the actual monetary worth of the property, such actual monetary worth (as defined below) shall be subject to review by the Division of Revenue and may be based on existing assessment records, current sales data, construction reproduction costs or other information as may be appropriate.
- (3) The actual consideration set forth in the form of selling price in the document or contract of sale shall be the measure of value only in the case of an arm's length transaction. In the case of a transaction which is not arm's length, value shall be determined from the actual monetary worth of the property which is subject to the transaction. For example, transactions between related parties will be closely scrutinized.
- (4) "Actual monetary worth" is the price which a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all relevant factors known at the time of conveyance, including current or pending zoning or use restrictions.
- (5) Valuation of §5401 (4) Leases - In the case of a transfer of any lease in §5401 (4) of the act (relating to unit property leaseholds with terms in excess of five years, and leaseholds owned by the State and residential property leaseholds with terms in excess of five years)) 'value' shall be determined pursuant to §5401 (3) of the act.
- (6) Valuation of Real Property Situated Partly Within and Partly Without the State - In a real estate transaction involving property situated partly in Delaware and partly in Maryland or Pennsylvania, the "value" subject to the transfer tax shall be such part of the total value as is attributable to the portion of such real property situated within the State of Delaware, or the interest in such portion. This pro rata method of valuation shall be used when all of the land is of value in both states. However, in cases of disproportionate value where the land in Delaware is of demonstrably greater or lesser value than the land in the other

state (as, for example, due to location, quality or the existence of improvements) then the "value" may be determined in accordance with paragraph (2).

- (7) **Valuation of Property in Creation of Joint Tenancy** - In the case of the creation of a joint tenancy between one grantor and one grantee (i.e., A to A and B as joint tenants), the "value" of the property shall be determined as one-half of the value of the whole property. The "value" of the property for transfer tax purposes shall increase proportionately depending on the number of persons to whom it is transferred. For example, a transfer from A to A, B, and C would be taxed at a value of two-thirds of the actual total value of the real estate transferred since a two-thirds interest in the whole is transferred.

### Section 3: EXEMPTIONS

#### 3.1 General Applicability and Construction of Exemptions

- (a) Under the act, certain transfers of real estate or interests in real estate are exempt from the tax. Only those transactions and parties specifically exempted by the act shall be exempt from tax. Exemptions shall be strictly construed and the burden of proof to establish exemption from the tax shall be on the parties.
- (b) When a document representing an exempt transaction is presented for recording, it must be accompanied by an affidavit stating the reason (s) for exemption in order to satisfy §5409 of the act. In the case of a transaction exempt from the tax under §5401 (1)(p) of the act, the affidavit shall be made by the grantee.

#### 3.2 Specific Exemptions

- (a) **Transfers by Will or Intestate Law** - A transfer by will or under the intestate laws shall be exempt. Transfers under Court of Chancery adjudications allocating real estate to a widow as part of her exemption or allowance shall also be exempt. An option to purchase real estate under a valid will shall constitute a direct devise of the real estate to the optionee; if the option is exercised, the transfer shall be deemed to be by will and shall be exempt.
- (1) The provisions of this paragraph may be illustrated by the following examples:

##### Example 1:

The devise of an interest in real property under a will is not subject to the tax.

##### Example 2:

A deed given by an executor in accordance with the terms of the will is not subject to tax; however, if by reason of a consideration passing between devisees, one of them takes a greater share in the realty than that to which he is entitled under the will, the deed given by the executor to convey such greater share is subject to tax computed on the amount of such consideration.

##### Example 3:

A deed given by an executor in connection with the sale of an interest in real property (not pursuant to an option granted to the purchaser under the will) is subject to tax.

- (b) **Leases** - Except for leases described in §5401 (4) of the act, leases shall be exempt. A lease assignment, substituting parties as lessees is likewise exempt. There shall be no difference for the purposes of this paragraph between leases, subleases and assignments of leases. For a description of leases subject to the tax, see the section of these regulations on "Taxable Transactions and Parties".
- (c) **Mortgages** - Mortgages are exempt. Reference should be made to §5401 (1)(p) of the act (relating to the exemption of a conveyance by sheriff on foreclosure or by defaulting mortgagor). In the event of a conveyance by a mortgagor to a mortgagee (or his nominee) of the mortgaged premises in consideration for the cancellation of the debt of the mortgagor, the tax is imposed except as otherwise provided in the Regs. Refer to the section on "Taxable Transactions and Parties" for more detail.
- (d) Conveyances between corporations operating housing projects pursuant to Chapter 45 of Title 31 of the Delaware Code (known as the Slum Clearance and Redevelopment Authority Law) and the shareholders of these corporations shall be exempt from the tax.
- (1) **Turnkey Projects** - Transfers of real estate from housing authorities to land developers or contractors who are bound by legal agreement to reconvey such real estate to the housing authority after making improvements shall be exempt from tax to the extent that no

beneficial interest is transferred to the developer or contractor through such conveyance. The reconveyance of such real estate to the housing authority shall be similarly exempt.

- (e) Conveyance between non-profit industrial development agencies and industrial corporations purchasing from them, shall be exempt.
- (f) Conveyance to non-profit industrial development agencies shall be exempt. For example, pursuant to its power to acquire real property which may be improved for the purpose of maintaining or providing gainful employment within the State, the Delaware Economic Development Authority would be exempt from the realty transfer tax.
- (g) Conveyances between husband and wife are exempt from the tax. A transfer by husband and wife or either of them to a straw party with an immediate retransfer back by the straw party to the husband and wife or either of them (such as would be done to create or end a tenancy by the entireties) is not taxable.
- (h) Any conveyance between persons who were previously husband and wife, but who have since been divorced is exempt from the tax, 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/or wife, prior to granting of the final decree in divorce.
- (i) Conveyance between parent and child or the spouse of such child are exempt from the tax. Conveyances between child and trustee for the benefit of a parent are exempt. Conveyances between parent and trustee for the benefit of a child or the spouse of such child are exempt.
- (1) The exemption allowed by this paragraph may be illustrated by the following examples:

**Example 1:**

Father transfers real estate to son and son's wife. The transfer is exempt.

**Example 2:**

Husband, wife and daughter A, who are equal tenants in common, convey as grantors to themselves plus daughters B and C as grantees; the transfer is taxable to the extent of two-fifths (2/5) of A's one-third (1/3) interest.

**Example 3:**

Father transfers real estate to his adopted son. The transfer is exempt provided the adoption was effectuated

by formal decree rendered by a court of competent jurisdiction.

**Example 4:**

Father dies leaving his estate in equal shares to his three children. One of the children agrees to take all of the real estate as his share of the whole estate and the father's executor executes a deed to him; the transfer is taxable as to two-thirds (2/3) of the real estate.

**Example 5:**

Father transfers real estate to step-son; the transfer is taxable.

**Example 6:**

The transfer from a child's mother through a straw party to herself and daughter-in-law as joint tenants is exempt.

**Example 7:**

The transfer by a grandparent to a grandchild is taxable.

- (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 the realty transfer tax law, or (c) from a trustee, nominee or straw party to the beneficial owner is exempt.
- (1) Transfers to a trustee, nominee or straw party for the beneficial ownership of a person other than the grantor are taxable if the receipt of the property directly by the beneficiary would be taxable under the act. If direct receipt of the property by the beneficiary would be exempt under the act, then use of the trustee, nominee or straw party shall not cause the tax to be imposed.
- (2) A conveyance to a grantee in trust to hold the property for the benefit of income beneficiaries and remaindermen is subject to the tax to the extent of the value of the interest ultimately passing to persons other than the grantor; it makes no difference in taxability that the trust is revocable. If the legal title will ultimately vest in a person not exempt under the act, the entire value of the property is subject to the tax. Conveyance from a trustee to a beneficiary in distribution of the trust is not taxable if the tax was paid on the deed conveying the property to the trustee.
- (k) Conveyance between a parent corporation and a wholly-owned subsidiary corporation shall be exempt provided such

corporation shall be exempt provided such conveyance is without actual consideration.

- (l) Deeds made without consideration for the sole purpose of correcting an error in the description of the parties or of the premises conveyed shall not be taxable.

This exemption shall apply only to deeds between identical property described in the correcting deed, and only where there is compliance with the following requirements.

- (A) The realty transfer tax shall have been paid on the original deed (unless exempt).
- (B) The property in the correctional deed shall be identical with the property originally intended to pass.
- (C) Both parties shall have treated the property described in the correctional deed as that of the grantee and the property in the original deed as that of the grantor from the time of the original transaction.
- (D) There shall be no consideration for the transaction other than the re-delivery of the deed delivered in error.
- (E) An affidavit shall be filed by the parties giving detailed explanation of the transaction.
- (m) Conveyances to or from the United States, this State, or to any of their instrumentalities, agencies or political subdivisions are exempt.
- (n) (1) Conveyances of real estate to or from a corporation or partnership are exempt from the tax, subject to the following qualifications.
- (a) The business must be either a corporation or a partnership; and
- (b) The grantor conveying to, or the grantee receiving from the corporation or partnership must own stock of the corporation, or an interest in the partnership at the time of conveyance (the interest in the partnership shall be measured by the capital account); and
- (c) The proportion of the stock or partnership interest owned by the grantor or grantee to the entire amount of stock or the entire partnership must equal the proportion of his interest in, or ownership of the real estate being conveyed; and
- (d) In the case of any conveyance resulting from the partial or complete liquidation of a corporation, the stock held by the

grantee must have been held by said grantee for more than three years.

- (e) In the case of a conveyance from a partnership to its partners, the partners interest in the partnership must have been held for more than three years.

- (2) Reference should be made to the section of these regulations on "Taxable Transactions and Parties" for the taxability of certain transaction involving corporations and partnerships.

- (o) Any conveyance by the owner of previously occupied residential premises to a builder of new residential premises shall be exempt if the 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.

- (1) The exemption by this paragraph is applicable only with respect to the conveyance of the previously occupied premises by the owner thereof. The exemption allowed by this paragraph does not apply to the conveyance by the builder of the new residential premises.

- (2) This exemption only applies if a person transfers his residence to a builder in exchange for a new previously unoccupied residential premises. The builder shall be the owner-grantor of the new previously unoccupied premises, and the buyer shall be the owner-grantor of the property conveyed to the builder as part of the consideration paid to the builder for the new property.

- (3) The exemption claimed for the trade-in on previously occupied premises will not be allowed unless sufficient proof is submitted that there is a deed conveying a new previously unoccupied house to the owner conveying his old house.

The deed book volume, page number, and the date of the sale of the new house should be indicated on the affidavit of value claiming the exemption for the transfer of the old house.

- (4) Examples of the exemption claimed under the provisions of this section shall be as follows:

**Example 1:**

New Homes, Inc. is the owner in fee of a residential property which it has built as No. 100 Shady Lane, valued at \$20,000, and never occupied. X is the owner of the premises at No. 26 Main Street, which is valued at \$5,000. X purchases premises 100 Shady Lane from New

Homes, Inc., and as a down payment conveys premises 26 Main Street to New Homes, Inc. The deed from X to New Homes, Inc. is exempt from the tax. The deed from New Homes, Inc. to X is taxable on the actual consideration, of \$20,000. No deduction is allowed on the conveyance from New Homes, Inc. to X, on the basis of the value of the property traded by X.

**Example 2:**

Assume the same ownership facts as in example (1) of this subsection. X purchases premises 100 Shady Lane from New Homes, Inc. for \$20,000, but conveys 26 Main Street to Y for \$5,000, and uses the proceeds therefrom as a downpayment to New Homes, Inc. Both conveyances shall be taxable on the basis of the actual consideration.

- (p) Any conveyance to a lender holding a bona fide mortgage which is genuinely in default shall be exempt whether the conveyance is by sheriff conducting a foreclosure sale or by the mortgagor in lieu of a foreclosure.
- (1) Generally, any transfer to a mortgagee pursuant to a sheriff's sale in which the purchaser is the mortgagee who instituted such sale is exempt. In the event that the mortgagee is the successful bidder at the sheriff's sale and assigns or transfers his bid rather than making settlement with the sheriff, then the transfer tax will be paid only by the assignee or transferee of the mortgagee/bidder who ultimately purchases the property. No tax will be due on the assignment or transfer of the bid.
  - (2) In order to qualify for this exemption, the mortgage held by the lender must be genuinely in default. Consequently, a

conveyance by a mortgagor to a mortgagee or his nominee of the mortgaged premises is a consideration for the mere cancellation of the debt of the mortgagor is not exempt. Reference should be made to the section of these regulations on "Taxable Transactions and Parties" and the paragraph therein relating to deeds from a mortgagor to a mortgagee.

- (q) Conveyances to a religious organization or other body or person holding title to real estate for a religious organization shall be exempt if the real estate conveyed will not be used after the conveyance by the grantee or any privy of the grantee for any commercial purpose.
- (1) Only that portion of the tax attributable to and otherwise payable by the religious organization or other body or person holding title for a religious organization under §5402 of the act shall be exempt.
  - (2) That portion of the tax which is attributable to and payable by the grantor of the real estate shall not be exempt.
  - (3) Conveyances by a religious organization or other body or person holding title to real estate for a religious organization are subject to the tax.
- (r) Conveyances to or from a volunteer fire company, organized under the laws of this State shall be exempt.
- (1) Only that portion of the tax which is attributable to and payable by the volunteer fire company under §5402 of the act shall be exempt.
- (s) Conveyances of real property, the actual value of which is less than \$100, shall be exempt.

Section 4  
TAXABLE TRANSACTIONS AND PARTIES

4.1 General Provisions

- (a) Every document, whereby any interest in lands, tenements, or hereditaments within this State is granted, bargained, sold, quitclaimed, exchanged, vested, assigned or otherwise conveyed is subject to the tax, unless specifically exempted by the act or judicial decision. The situs of the land being conveyed is the controlling factor regardless of the place where the document is made, delivered or accepted.
- (b) Every person who makes, executes, accepts or presents for recording any document, or in whose behalf any document is made, executed, delivered, accepted or presented for recording shall be subject to the law at a rate of two percent (2%) of the value (as defined in section 5401 of the act) of the real estate represented by such document except, as may be specifically exempted under the Act.
- (c) The performance of any one of the acts specified in the section of these regulations which defines the term "document" (§2.1(d)) creates liability for the tax. The tax is upon a transaction conveying by document a beneficial interest in real estate, but is payable at the time of recordation.
- (d) The payment of the tax shall be evidenced by the affixing of a documentary stamp or stamps to every document by the person making, executing, delivering or presenting for recording such document.
- (e) It is the duty of both parties to the transaction to see that the tax is paid. The tax is apportioned equally between grantor and grantee. The tax shall be payable at the time of the presenting of the document for recording. Both parties are liable for payment of the tax unless one of the parties to the transaction is specifically exempted from payment of the tax (as, for example, in the case of conveyances involving religious organizations or volunteer fire companies under §5401(1)(q) and (r) of the act).

This dual responsibility may be discharged as the parties agree, without prejudice to the rights of the State against all parties. As between the parties to transactions involving leases under §5401(4) of the act, in the absence of an agreement to the contrary, should a dispute arise between the parties to the transaction concerning the payment of tax, the burden for paying the tax shall be on the grantor.

- (f) The act is intended to impose one tax on the transaction. An instrument of conveyance may not be recorded until the tax is paid.
- (g) Notwithstanding the rate of tax recited in subsection (a) of §5402 of the act, transfers pursuant to valid written contracts entered into prior to August 1, 1971, shall be subject to the tax at the rate imposed to August 1, 1971, one percent (1%).

4.2 Specific Transactions And Parties Subject To The Tax

- (a) Certain Leases - §5401(1)(b) of the act exempts leases from the tax with the exception of certain leases described below.
  - (1) Any writing which purports to transfer title interest or possessory interest for a term of more than five years in a condominium unit or any unit property subject to the UNIT PROPERTY ACT shall be within the meaning of the term "document", and therefore taxable. A lease assignment substituting parties as lessees is not taxable. For definitions and the general applicability of the Unit Property Act, see 25 Del. C., §§2201-2240.
  - (2) Any writing which purports to transfer title interest or possessory interest of a lessee or other person in possession of real estate owned by the State or political subdivision thereof shall be within the meaning of the term "document", and therefore taxable. Taxability of documents of this type is limited to those which represent transfers effectuated by the lessee of the State or by persons in possession of real estate owned by the State. Should the transfer be effectuated by the State itself, there is no tax since transfers from the State are not subject to the tax.
  - (3) Any writing purporting to assign or transfer a lease-hold 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) (86), relating to commercial lessors. For example, X purchased from Y for \$100,000 a house

located in Rehoboth Beach. The land upon which the house is erected is subject to a 99-year lease. The conveyance is subject to the tax.

(b) Deeds from Sheriffs, Marshals, Trustees, Receivers and Corporate Trustees.

(1) Any conveyance to a lender holding a bona fide mortgage which is genuinely in default shall be exempt whether the conveyance is by sheriff conducting a foreclosure sale or by the mortgagor in lieu of a foreclosure. Reference should be made to §3.2(p) of these regulations.

(2) The officer making the sale shall conform with the requirements of this paragraph in all cases except the following exempt transactions:

(A) Any transfer to which §5401(1)(p) of this act, or regulations (see §3.2(p)) thereunder apply. The grantee or grantees shall have been the grantor or grantors of the identical property in the prior transaction unless the grantees have assigned their bid as in §3.2(o)(1) of these regulations.

(B) Conveyances to municipalities, towns, and counties pursuant to acquisition by them of tax delinquent properties as in §3.2(M) of these regulations.

(C) A deed from a United States marshal, sheriff or other judicial officer either by foreclosure or in lieu of foreclosure to the Farmers Home Loan Administration, the Federal Housing Administration, the Veterans Administration or similar federal agency if such agency is the mortgagee-purchaser.

(c) Deeds To and From Trustees - A conveyance to a grantee in trust to hold the property for the benefit of income beneficiaries and remaindermen is subject to tax to the extent of the value of the interest ultimately passing to persons other than the grantor. It makes no difference that the trust is revocable. If the legal title to property will ultimately vest in a person not exempt under the act, the entire value of the property is subject to the tax. Moreover the transfer is taxable where the trustee is in the exempt class and the ultimate remainderman is not.

(d) Exchange of Interest in Real Estate -

(1) In a case where the parties transfer and exchange (swap) properties between

themselves, the deed transferring title to each is subject to the tax.

(e) Quitclaim Deeds - A quitclaim deed is taxable upon the same basis as other deeds.

(f) Deeds of Easement - Deeds of easement are subject to tax based on the actual consideration or the actual monetary worth thereof. Reference should be made to §2.1(a) of these regulations which specifically includes easements within the definition of a taxable document.

(g) Conveyances of Land in Consideration of Maintenance - A Conveyance of land in consideration of the grantee agreeing to maintain the property for his lifetime is taxable, the tax to be measured by the actual monetary value of the property or interest conveyed.

(h) Conveyance to a Corporation in Consideration of the Issuance of Stock - A conveyance of real estate to a corporation in consideration of the issuance by the corporation to such grantor of capital stock is a taxable transaction and the tax shall be computed upon the actual monetary value of the property so transferred. However, where the person transferring real estate to a corporation owns capital stock of the corporation in an equal proportion to his ownership in the real estate being conveyed, there is no tax. Reference should be made to §5401 (1)(h) of the act and §3.2(h) of these regulations.

In the case of a merger between two corporations in which there is no recording of a document pertaining to real estate, the tax does not apply. However, where deeds or documents which pertain to, or have a direct bearing on the conveyance of real property are filed or recorded in connection with a merger, then the conveyance is taxable.

(i) Deeds by an Executor to Devisees - Deeds by an executor or administrator to devisees, conveying the specific parcels of real estate willed to such devisees are not subject to tax, unless such devisees receive a greater share in the real estate than they are entitled to receive under the will, in which event the tax shall be computed upon the value of the excess real estate.

(1) Reference should be made to §3.2(a) of these regulations (relating to transfer by will or intestate laws).

(2) The provisions of this paragraph may be illustrated by the following examples:

**Example 1:**

Decedent dies intestate, leaving X, Y, and Z. There are three pieces of real

estate: lots 1, 2, and 3. The heirs agree among themselves to have one lot conveyed to each heir. Each conveyance would be subject to tax upon 2/3 of the value of the lot. Since each heir has an undivided 1/3 interest in each lot, the settlement is, in essence, an agreement of the other two heirs to convey their 2/3 interest in each parcel. The same rule shall apply if a testator devises real estate to several devisees; or if the real estate passes to several devisees under the residuary clause, and such real estate is divided among the devisees as they might agree.

**Example 2:**

Under his will, the testator gave his entire estate to his two sons, A and B in equal shares. Son A agrees to take all of the real estate and Son B agrees to take the personalty. The real estate is subject to tax in the amount of 1/2 of the value thereof since only 1/2 passes by virtue of the will, and the other 1/2 passes by virtue of the agreement between the heirs.

- (j) Transactions Between Partnerships and Partners - Partnerships are taxable as separate entities to the same extent as corporations and the regulations affecting corporations and their shareholders are applicable thereto.
- (1) The following rules, relating to the taxability of partner-partnership transactions shall apply if, immediately prior to the transfer of real estate, the grantee/grantor partner's interest in or ownership of the real estate being conveyed is not equal to his interest in the partnership. If his partnership interest is equal to his interest in or ownership of the real estate being conveyed, §5401(1)(n) of the act applies and the transaction is exempt from the tax subject to Regulation 3.2(h).
- (A) A transfer of real estate from a partner in his individual capacity to a partnership of which he is a member is a conveyance between taxable entities and, is a taxable transfer. The conveyance is taxable on the basis of the value of the property transferred.
- (B) A transfer of real estate from a partnership to a partner thereof in his individual capacity is a conveyance between taxable entities is a taxable transfer. The conveyance is taxable on the basis of the value of the property transferred.

- (C) The provisions of subparagraphs (A) and (B) relating to transactions involving the partner in his individual capacity may be illustrated by the following examples:

**Example 1:**

A, B, and C are equal partners. Their partnership owns real estate valued at \$100,000 and has other assets valued at \$200,000. Upon liquidation, the partnership conveys the real estate to A, B, and C as tenants in common and the other assets are equally divided among A, B, and C. The transfer of the real estate is not taxable provided that the partners interest in the partnership has been held for more than three years.

**Example 2:**

Same as example 1 except that the real estate is conveyed to A alone while B and C divide the other assets. The transfer to A is taxable on the basis of the value of the real estate so transferred.

**Example 3:**

A and B own real estate as tenants in common. With a third person, they create a partnership with equal interests and transfer the real estate to it. The transfer to the partnership is taxable on the basis of the value of the property transferred.

- (D) Upon (a) the admission of a new partner by a partnership, or by (b) the creation of a new partnership because of the addition of a new partner, a conveyance of partnership real estate (i) from the partnership, as constituted prior to admission of the new partner or partners, to the partnership as constituted subsequent to admission of the new partner or partners, or (ii) from the old partnership to the new partnership, is taxable on the basis of the value of the property transferred. This subparagraph will apply only when there is a document that conveys the real estate.
- (E) Upon (A) the withdrawal of a partner from a continuing partnership, or (b) the creation of a new partnership because of the withdrawal of a partner, a conveyance of partnership real estate (i) from the continuing partnership, as constituted prior to the withdrawal of

the partner, to the partnership as constituted subsequent to the withdrawal of a partner, or (ii) from the old partnership to the new partnership, is taxable on the basis of the value of the property transferred. This subparagraph will apply only when there is a document that conveys the real estate.

- (F) The provisions of subparagraphs (D) and (E) relating to transactions involving the admission and withdrawals of partners to and from existing partnerships may be illustrated by the following examples:

**Example 1:**

A Associates, a partnership comprised of individuals A, B, C and D, owns property with a fair market value of \$100,000. The partners desire to have E join the partnership with an interest of 10% for which he will pay \$50,000. The property is conveyed by a document from the four partners of a partnership to themselves and E, the new partner, as a partnership. The conveyance would be subject to tax on the basis of the value of the property transferred.

**Example 2:**

Real estate is owned by Partnership A. The three partners in the partnership create a new partnership with two additional persons, all partners in the new partnership having equal interests. The real estate is conveyed by a document from the old partnership to the new. The transfer is subject to tax on the basis of the value of the property transferred.

**Example 3:**

A, B and C are equal partners in a partnership which owns real estate. The real estate has a fair market value of \$300,000. C withdraws from the partnership and is paid the value of his interest in the partnership out of other partnership assets. The

partnership continues in existence with A and B as equal partners. In conjunction with C's withdrawal from the partnership, the real estate is conveyed by a document from A, B, and C as partners to A and B, as partners. The conveyance is subject to tax upon the value (\$300,000.00) of the property transferred.

- (k) Any conveyance from a religious organization or from a body or persons holding title to real estate for a religious organization is subject to the tax on the value of the property transferred. Transfers to such organization, body or person are partially exempt. (See §3.2(p) of these regulations)
- (l) Conveyance of a Lot Including Building Erected Thereon - Conveyance of real estate, including any buildings or improvements erected thereon, shall require tax to be paid on the value of such improved property. Thus if a purchaser contracts to buy a lot but fails to take title to the same until after the improvements have been constructed thereon, the base for tax is the actual monetary worth of the real estate as improved.
- (1) The transfer of property with mobile homes which have become affixed to the land is taxable. Factors which lend to show that the mobile home has been affixed to the land include, but not limited to, some or all of the following:
- (A) 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.
  - (B) The mobile home has been connected to utilities such as electricity, sewage, water, gas or oil.
  - (C) Skirting has been erected around the base of the mobile home.
  - (D) The wheels and/or tires have been removed.
  - (E) The mobile home has been situated in a place which makes its removal unlikely.

**Section 5  
ADMINISTRATION AND PROCEDURAL PROVISIONS**

**5.1 Value to be Stated in Document or Affidavit**

- (a) Deed for Consideration - In all cases except deeds without consideration and gifts, where the full consideration for the document is not set forth in the deed, an affidavit, in duplicate, executed by a responsible person connected with the transaction shall be filed setting forth the true and complete consideration paid for the interest conveyed. The following persons shall be included in the definition of a responsible person connected with the transaction: grantor, grantee and attorney for either grantor or grantee.
- (b) Deeds Without Consideration and by Gifts - In any case where a document represents a transfer without consideration, an affidavit of value shall be filed in duplicate, setting forth

the actual monetary worth of the realty conveyed.

- (c) Where the transaction is claimed to be exempt, the affidavit, in duplicate, shall be filed with the Recorder of Deeds setting forth the actual monetary worth of the realty conveyed and the legal basis for the claimed exemption.
- (d) Affidavits shall be made on forms prepared by the State Division of Revenue.
- (e) In the case of a transaction exempt from the tax under subsection (p) of §5401(1) of the act, the affidavit required shall be made by the grantee.
- (f) A form of Affidavit of Value is attached hereto as exhibit 1 ["Appendix 1" reproduced immediately below"].

**Appendix 1  
AFFIDAVIT OF VALUE**

Required under Section 5409 of the Realty Transfer Tax Act of June 9, 1965. H.B. No. 267

To be filed in duplicate with the Recorder of Deeds

STATE OF DELAWARE  
COUNTY OF \_\_\_\_\_

\_\_\_\_\_ being duly sworn,  
hereby states he is the (GRANTOR) (GRANTEE) (ATTORNEY FOR GRANTOR OR GRANTEE) in the deed between

\_\_\_\_\_  
(Name and Address of GRANTOR)

and \_\_\_\_\_  
(Name and Address of GRANTEE)

with regard to which this Affidavit is given, and that the true, full and complete market value of such transaction, including mortgages, liens and other encumbrances is \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ). The highest  
assessed value of said real estate for local tax purposes is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ )\*

Property Location: \_\_\_\_\_  
(Street and Number) (City or Township)

The following information is to be supplied only on an affidavit by a broker claiming a credit under 30 Del. C. Section 5403.

Time of Acquisition of Property \_\_\_\_\_  
Tax Paid on Acquisition \_\_\_\_\_  
Credit \_\_\_\_\_  
Net Tax \_\_\_\_\_

Sworn and Subscribed before me  
this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Affiant

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Address)

\*If transaction is not taxable, explain (use other side if Necessary): \_\_\_\_\_

- (g) In the event of a transfer of property at a judicial sale, if, prior to the delivery of the deed pursuant to said sale, the purchaser delivers to the sheriff or other judicial officer an affidavit as herein before described that the transfer is exempt from the tax under §5401(1)(p) of the act, then the sheriff shall not pay the tax, but shall deliver the affidavit to the Recorder of Deeds as agent for the Division of Revenue.

## 5.2 Rate of Tax; Period Covered by Tax Period

- (a) Every person shall be subject to pay a realty transfer tax at the rate of two percent (2%) of the value of the property being represented by the document being recorded. The tax is to be apportioned equally between grantor and grantee. For rules concerning the determination of "value", reference should be made to §5401(3) of the act and §2.1(c) of these regulations. The rate of tax on transfers of interests in condominiums and leases under §5401(4) of the act is two percent (2%). In the case of a document described under §5401(4), in the absence of an agreement to the contrary, the burden for paying the tax shall be on the grantor.
- (b) The tax is generally imposed and payable at the time the document is made, executed, delivered, accepted or presented for recording. Payment is to be evidenced by the affixing of documentary stamps. In certain situations where leases covered by §5401(4) of the act are transferred, and the payment of consideration therefore is to span more than one year, the tax is imposed at the time of recording and annually thereafter.

## 5.3 Assessment of Tax by Division of Revenue

- (a) Determination of Correct Tax - The Division of Revenue will examine all documents and Affidavits of Value to ascertain whether or not the full amount of tax has been paid. If such examination discloses that the consideration set forth in the document is not the proper base for the tax, or that the value declared in the Affidavit of Value is incorrect, it shall make a determination of the correct tax due. All of such determinations shall be made so that notice thereof shall reach the parties against whom made within 3 years after the date of recording the document.
- (b) Promptly after the date of any such determination, the Division of Revenue shall send by registered mail a copy thereof to all parties subject to the tax.
- (c) Within ninety (90) days after the date upon which the copy of any such determination

was mailed, a taxpayer may file with the Division of Revenue a Petition for Redetermination of such tax.

- (d) Every Petition for Redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and shall be supported by an affirmation that it is not made for the purpose of delay and that the facts set forth are true. A Petition for Redetermination should contain the following:
  - (1) The name and address of petitioner.
  - (2) The file number appearing on the certified copy of the Determination.
  - (3) The amount of tax determined by the Division of Revenue and the amount of tax the petitioner claims is correct.
  - (4) A detailed schedule of the items to which the petitioner takes exception.
  - (5) A summary statement of the reasons upon which the taxpayer relies in connection with each exception.
  - (6) Statement as to whether or not the petitioner desires a hearing.
  - (7) Petition should be signed under oath or affirmation by the petitioner.
- (e) It will be the duty of the Division of Revenue, within six months after the date of any tax determination, to dispose of any petition for redetermination. The Division of Revenue will take action on the petition for redetermination and notice of the action taken on the petition will be promptly mailed to the petitioner. If the Division does not act within the six month period, the taxpayer may file a petition with the Tax Appeal Board.
- (f) A taxpayer dissatisfied with the Division of Revenue's action on its petition for redetermination may within ninety (90) days after the date of mailing notice by the Division of the action taken on any petition for redetermination filed with it, the taxpayer against whom such redetermination was made may file a petition with the Tax Appeal Board.
- (g) Interest added to any determination of additional tax shall be computed at the rate of one percent (1%) of the amount of additional tax per month or fraction thereof from the date the tax should have been paid to the date paid.

## 5.4 Collection of Tax

- (a) The tax will generally be calculated by the taxpayer and paid at the time the document is made, executed, delivered, accepted or presented for recording.

- (b) No document upon which tax is imposed by the act shall be recorded in the office of any recorder of deeds of any county of the State of Delaware unless proof of the payment of the tax appears on the document as is provided in §5404(a) of the act.
- (c) Payment from Proceeds of Judicial Sale
- (1) The tax shall be fully paid and have priority out of the proceeds of any judicial sale of real estate before any other obligation and before the costs of the sale and of the writ. The duties of an officer conducting a judicial sale shall be to pay the tax out of the first money paid to him before any other costs and to conform with this requirement in all cases except where both the execution debtor and the purchaser are exempt parties.

## 5.5 Refunds and Remedies of Taxpayer

- (a) Upon determining that the tax collected has been collected improperly, the Division will refund to the taxpayer the sums so paid with interest.
- (1) The interest on such a refund is one percent (1%) per month or fraction thereof from the date the tax was paid to the date the refund is made.
- (b) Credit on Certain Transfers by Real Estate Brokers
- (1) Reference should be made to §2.1(g) of these regulations for a definition of the term "Real Estate Broker."
- (2) Where there is a transfer of a residential property by a licensed real estate broker which property was transferred to him 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 him shall be given to him 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.

If a credit under 30 Del. C., Section 5403 is claimed the broker must file an Affidavit of Value and must supply the information contained in the section of the form marked Broker's Affidavit as well as the other information.

- (3) The provisions of this paragraph may be illustrated by the following examples:

### Example 1:

In June, Owner O transfers property #1 to Broker B. Property #1 is residential property and is part of the consideration for the purchase of other residential property as transacted between O and B. #1 is valued, for transfer tax purposes, at \$100,000 and the tax of \$2,000 thereon is duly paid. In May, (i.e., within one year of the transfer of #1 from O to B) B sells #1 to Purchaser P for a consideration of \$120,000 which represents the transfer tax base. The tax due thereon is \$2,400 but B is entitled to a credit computed as follows:

• Transfer tax due on transfer from B to P:	\$2,400
• Transfer tax paid on transfer from O to B (credit):	<u>\$2,000</u>
• Tax Due:	\$ 400

### Example 2:

Facts same as example 1 except that, on subsequent transfer of #1, the consideration (tax base) received is \$98,000. No refund is allowed to B on the excess of his credit over the tax due.

• Transfer tax paid on transfer from O to B (credit):	\$2,000
• Transfer tax due on transfer from B to P:	<u>\$1,960</u>
• Excess tax paid over tax due not allowed as refund:	\$ 40