



MAINE REVENUE SERVICES PROPERTY TAX DIVISION BULLETIN NO. 31

REAL ESTATE TRANSFER TAX

REFERENCE: 36 M.R.S. §§ 4641 – 4641-L
February 17, 2022

1. General

Maine imposes a tax on certain transfers of real property located in the State. A taxable transfer can occur either through a transfer by deed between persons or the transfer of more than 50% of a direct or indirect ownership interest (a controlling interest) in an entity owning Maine real property. This bulletin explains Maine law applying the real estate transfer tax to transfers by deed. For information on transfers of a controlling interest, see MRS Rule 207 – Controlling Interest Transfers.

2. Definitions

- A. Entity. “Entity” means an organization that has a legal identity that is separate from the individual members or owners of that organization. Examples of entities include, but are not limited to, partnerships, corporations, associations, and trusts.
- B. Market value. “Market value” means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller for a property, each acting without compulsion in an arm’s-length transaction.
- C. Person. “Person,” as defined in 36 M.R.S. § 111(3), means an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.
- D. Real property. “Real property,” as defined in 36 M.R.S. § 4641(2-A), means land or anything affixed to land. “Real property” includes, but is not limited to, improvements such as buildings, mobile homes other than stock-in-trade, lines of electric light and power companies and pipelines and other things constructed or situated on land when the owner of the improvements is not the landowner.
- E. Return. “Return” means the combined Controlling Interest Transfer Tax Return/Declaration of Value form furnished by or approved by Maine Revenue Services (“MRS”).
- F. Value. “Value,” as defined in 36 M.R.S. § 4641(3), means either (1) the actual consideration paid for the fee interest in the real property, or (2) the market value of the fee interest in real property when the entity has been transferred by gift or with nominal consideration or without

stated consideration, or when the consideration for the real property cannot be determined. “Nominal consideration” means less than 20% of the property's most recently locally assessed value as adjusted by the municipality's or unorganized territory's certified assessment ratio, unless the taxpayer provides an attestation from the local assessor that the most recent locally assessed value does not reflect current market value.

3. Transfers

The real estate transfer tax applies to the transfer by deed of all real property. Most transfers of real property are accompanied by a deed, which is a written document that conveys title to real property from one person (the grantor) to another person (the grantee). To be valid, a deed must be recorded with the register of deeds in the county where the property is located. To adequately record a deed, a completed Real Estate Transfer Tax Declaration must be filed and the tax paid. For purposes of the real estate transfer tax, any written document conveying title to real property is considered a deed, even if it is titled something else such as a bill of sale.

4. Tax

The real estate transfer tax is equal to \$2.20 for each \$500 or fractional part of \$500 of the value of real property. Half of the tax is imposed on the grantor and half is imposed on the grantee.

- A. Value. The tax on a transfer by deed is based on the value of the property transferred. Value ordinarily means the consideration exchanged for the property being transferred. Consideration usually means money, but can also include other items such as another property or assumption of existing mortgage. An exception to the consideration basis exists in cases where the consideration exchanged is equivalent to less than 20% of the market value of the property. In these cases, the tax is calculated on the market value of the property exchanged.
- B. Return and payment. A transfer by deed, unless specifically exempted, requires a declaration of value to record the transfer with the appropriate register of deeds. The declaration of value, called a Real Estate Transfer Tax Declaration (RETTD), is provided by MRS and must be completed and accepted by the register of deeds prior to recording a deeded transfer of real estate. The register of deeds must submit all RETTDs to MRS within 40 days of deed recordation. MRS offers an online filing service that is mandatory for some RETTD preparers and optional for others. See MRS Rule 104 – Filing of Maine Tax Returns, for more information. Payment of the real estate transfer tax must be made to, and approved by, the register of deeds prior to recording a transfer by deed. The register of deeds keeps 10% of the tax collected and remits the remaining 90% to MRS monthly.

5. Exemptions

If a transfer is not subject to the real estate transfer tax due to an exemption, that exemption must be claimed and specifically identified on the return. See 36 M.R.S. § 4641-C. The following transfers are exempt from the real estate transfer tax.

- A. Governmental entities. The federal government and the State of Maine, and their instrumentalities, agencies, and subdivisions are exempt from the real estate transfer tax, both as grantor and grantee. These entities are not subject to the real estate transfer tax, but any non-governmental entity involved in a transfer with a governmental entity is generally responsible for that non-governmental entity's share of the tax. The law allows three exceptions to the requirement of a non-governmental entity to pay their portion of the tax. No tax is imposed on either the grantor or the grantee in a transfer involving a governmental entity in a case where:
- (1) Property is offered to the Department of Transportation or the Maine Turnpike Authority for transportation purposes;
 - (2) Property is gifted to a governmental entity; or
 - (3) A nonprofit land conservation organization sells property to a governmental entity.
- B. Mortgage deeds, deeds of foreclosure, and deeds in lieu of foreclosure.
- (1) Mortgage deed. A mortgage deed is written when a homeowner (mortgagor) transfers an interest to a bank or other lender (mortgagee) in return for a mortgage loan. The transfer tax is not imposed on either party in this transaction.
 - (2) Deed of foreclosure. A deed of foreclosure is written when a foreclosed property is sold usually at a public auction. In the event of a deed to a third party at a public auction the buyer pays their half on the sale price and the seller pays only on any profit they may have made from the sale. If no profit is gained, they pay no tax. If at a public auction sale the foreclosing entity is the high bidder then they are treated as both buyer and seller and pay full tax on the sale.
 - (3) Deed in lieu of foreclosure. A deed in lieu of foreclosure is written when an owner of a mortgaged property on which a lien has been placed (mortgagor) transfers that property back to the lender (mortgagee) prior to foreclosure. In this transfer, the mortgagor is exempt and the mortgagee owes one-half of the real estate transfer tax based on market value of the property.
- C. Deeds affecting a previous deed. The real estate transfer tax is not imposed on either party for a deed issued as a clarification or a corrective deed.
- D. Deeds between certain family members. Deeds between spouses (including distribution of property in a divorce), parent and child (including step-children), or grandparent and grandchild are exempt from the real estate transfer tax.
- E. Tax deeds. A tax deed is written when a municipality or the State acquires a property through foreclosure. Transfers of real property by tax deed are exempt from the real estate transfer tax.
- F. Deeds of partition. A deed of partition is written to divide property held by more than one person into separate shares of that property according to the portion to which each owner is legally entitled. For example, two individuals who own property as joint tenants write a deed to provide each of them a 50% share in the property, that transfer is exempt from the real

estate transfer tax. If, however, two individuals who are each entitled to 50% of a parcel of real property write a deed of partition giving one individual a 30% share and the other individual a 70% share, the individual receiving the 70% share will owe real estate transfer tax based on 40% of the real property value (i.e., 70% less 30%).

- G. Deeds pursuant to mergers or consolidations. A merger is a combination of two companies into one. A consolidation is a combination of more than two companies into one. A transfer of real property through merger or consolidation is exempt from the real estate transfer tax.
- H. Deeds by subsidiary corporations and deeds by parent corporation. A transfer by deed from a parent corporation to a subsidiary or from a subsidiary to a parent for no consideration other than the cancellation, surrender, or transfer of shares of stock in the subsidiary is exempt from real estate transfer tax.
- I. Deeds prior to October 1, 1975. Any transfer by deed dated prior to October 1, 1975, is exempt from the transfer tax.
- J. Deeds of distribution. A deed of distribution is written when property either owned by a decedent or placed in a trust by a decedent is transferred to a beneficiary where that beneficiary is not specified in the decedent's will or trust document or the decedent died without a will. A transfer by deed between a trustee or personal representative and a beneficiary allowed under Title 18-B or Title 18-C of the Maine Revised statutes on the death of the trust creator or property owner is exempt from real estate transfer tax.
- K. Deeds executed by public officials. Deeds executed by public officials in the performance of their official duties are exempt from the real estate transfer tax.
- L. Deeds given pursuant to the United States Bankruptcy Code. When property is transferred as required under Title 11 of the U.S. Code, the transfer is exempt from the real estate transfer tax.
- M. Deeds to a trustee, nominee, or straw.
 - (1) Trustee. A trustee is a person appointed, or required by law, to execute a trust. To be exempt, a transfer by deed to a trustee must be for the benefit of the grantor. For example, if the owner of a home transfers that property to a revocable living trust, the transferor (grantor) is still considered the owner of that home and there is no real estate transfer tax assessed on that transfer. Likewise, a transfer by deed from the trustee of that revocable trust back to the original grantor is exempt from the real estate transfer tax.
 - (2) Nominee. A nominee is a person named to act as another person's agent or representative. A transfer by deed to a nominee from a grantor for the benefit of the grantor is exempt from real estate transfer tax. Likewise, a transfer from that nominee back to the original grantor is exempt from the real estate transfer tax.
 - (3) Straw. Not taxable only when the "straw" has a specific purpose such as altering the wording of a deed or aiding in changing joint ownership to common ownership or participates in an exchange under Section 1031 of the Internal Revenue Code. A straw

transaction will provide a function for the grantor then retransfer the property back to the same person, this usually happens in back to back deeds. The use of a straw for purposes of hiding the real ownership of the property or finding real estate for another party does not create an exempt transaction.

- N. Certain corporate, partnership, and limited liability company deeds. This exemption applies only to the organization, dissolution, or liquidation of a business entity (corporation, partnership, limited partnership, or limited liability company) in which the majority of the voting stock in the entity is owned by family members and the majority of the stockholders, partners, or members are related to each other, including adopted individuals, as descendants or spouses of descendants of a common ancestor who was also a transferor of the real property involved, or persons acting in a fiduciary capacity for persons so related.

A transfer by deed from (or to) an individual (or individuals) to (or from) a business entity only for shares or other interest in that entity in the organization, dissolution, or liquidation of that entity are exempt from the real estate transfer tax.

- O. Deeds to charitable conservation organizations. A transfer by deed for no actual consideration to a nonprofit entity that meets the conservation purposes detailed in 33 M.R.S. § 476(2)(B) is exempt from the real estate transfer tax. A qualifying nonprofit entity must be organized as such under state or federal law.
- P. Limited liability company deeds. The transfer of real estate within a limited liability company is not subject to the real estate transfer tax.
- Q. Change in identity or form of ownership. This exemption is limited to a change in identity, such as an entity name change, or a change in entity type. The exemption does not apply to a transfer where there is a change in beneficial ownership.
- R. Transfers pursuant to transfer on death deed. A transfer by deed for no consideration by an individual to one or more beneficiaries effective when that individual dies is exempt from the real estate transfer tax.

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

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