NEBRASKA ADMINISTRATIVE CODE

Title ~~312~~ 350 - Nebraska Department of Revenue, Property Assessment Division

Chapter 52 - Documentary Stamp Tax Regulations

Effective Date

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Title 350 – Nebraska Department of Revenue, Property Assessment Division
Chapter 52 – Documentary Stamp Tax Regulations

REG-52-001 NATURE OF THE DOCUMENTARY STAMP TAX

001.01 The documentary stamp tax is a tax upon the grantor for the privilege of transferring beneficial interest in or legal title to real property located in the state of Nebraska based upon the value of the real property transferred. The tax is due when a deed is offered for recording, unless it is exempt. Payment of this tax or exemption therefrom is evidenced by a stamp the register of deeds affixes to each deed prior to recording. The stamp shall not be subsequently removed from the deed.

(Sections 76-902 and 76-904 through 76-908, R.R.S. 2003, and section 76-901, R.S.Supp., 2005.)

REG-52-002 DEFINITIONS

002.01 Assessed value shall mean the value of the property as reflected in the records of the County Assessor as of the date the deed is offered for recording.

002.0~~1~~2 Current market value shall mean the cash value of the real property based upon a sale between a willing buyer and a willing seller in the ordinary course of trade.

002.0~~2~~3 Deed shall mean every instrument in writing by which any real property or interest therein is created, aliened, mortgaged or assigned, or by which the title to any real property may be affected in law or equity, except last wills and leases for one year or less in time.

002.0~~3~~4 Full actual consideration shall mean the price paid or to be paid for which the real property was sold, whether paid in money or by any other thing of value, valued in its equivalent in cash, including but not limited to liens or mortgages assumed, or to be assumed, satisfaction of debt and other property transferred or to be transferred as part of the selling price. Liens and mortgages, taken subject to are included. Full actual consideration shall be a reasonable approximation of the current market value of the real property. If significantly less than a reasonable approximation of current market value, the consideration shall be treated as nominal. The amount of consideration and whether there is full actual consideration is to be determined as of the date stated on the deed.

002.0~~4~~5 Gift shall mean a voluntary transfer of beneficial interest in or legal title to real property without full actual consideration.

002.0~~5~~6 Nominal consideration shall mean a consideration for the transfer of title to real property bearing no relation to the current market or actual value of the real property. In all circumstances, nominal consideration shall mean that consideration given for the transfer of title to real property which is less than 20 percent of the assessed value of the real property. If the property is agricultural or horticultural land, the assessed value shall be adjusted by a factor of 1.33. If the assessed value is agricultural or horticultural land which has been given special valuation, the special value shall be adjusted to actual value.

002.0~~6~~7 Real property shall mean:

002.0~~6~~7A All real estate and lands, which include city and village lots. In the most general sense, it encompasses the ground, soil, or earth.

002.0~~6~~7B All buildings, which include but are not limited to, buildings or structures designed for habitation, shelter, storage, trade, agriculture, manufacture, business, education, religion, and the like. Building shall mean a structure or edifice enclosing a space within its walls, and usually, but not necessarily, covered with a roof.

002.0~~6~~7C All fixtures except trade fixtures, which include any item of property that is:

002.0~~6~~7C(1) Annexed or physically attached to or incorporated into the real property;

002.0~~6~~7C(2) Applied or adapted to the use or purpose of the real property to which it is attached; and,

002.0~~6~~7C(3) Intended to be annexed to the real property. Intention shall be inferred from the nature and extent of the annexation and adaptation, unless the owner of the item or the owner of the real property provides documentation that the intention is otherwise.

002.0~~6~~7D All improvements, which include any addition made to real property amounting to more than mere repairs or replacements, such as structures or developments like sidewalks, streets, sewers, or utilities.

002.0~~6~~7E Mobile homes, cabin trailers, or similar property, which are used or intended to be used for residential, office, commercial, agricultural, or other similar purposes and which are connected to utilities, such as water, gas, electricity or sewer. The item need not be permanently attached to the real property on which it is located, but shall not be registered for highway use. This term shall not include

mobile homes or cabin trailers that are unoccupied and held for sale by a person engaged in the business of selling such property, when such property is at the location of the business.

002.0~~6~~7F Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases. For more information, see Mineral Interests Regulations, Chapter 13.

002.0~~6~~7G All privileges pertaining to real property, including, but not limited to, the right to sell, lease, use, give away, or enter and the right to refuse to do any of these. All rights may or may not be vested in the owner or interest holder.

002.0~~6~~7H Improvements on leased land shall mean any item of real property, such as buildings, fixtures, improvements, mobile homes, or cabin trailers, which are located on leased land or leased public land.

002.0~~7~~8 Transfer shall mean any conveyance of beneficial interest in or legal title to real property evidenced by a deed.

002.0~~8~~9 Value shall mean:

002.0~~8~~9A In the case of any deed given for full actual consideration, value shall mean the amount of full actual consideration thereof, paid or to be paid. including the amount of any lien or liens assumed.

002.0~~8~~9B In the case of a deed given for nominal consideration, or without stated consideration, value shall mean the current market value of the real property being transferred, as of the date of the deed.

(Sections 76-902, and 76-904 through 76-908, R.R.S. 2003, and sections 76-901 and 76-903, R.S.Supp., 2005.)

REG-52-003 EXEMPTIONS

003.01 All deeds presented for recordation are presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the deed falls under an exemption enumerated in this regulation. Since all deeds are presumed to be taxable, these exemptions should be strictly construed.

003.02 The following shall be exempt from documentary stamp tax:

003.02A Deeds executed and recorded prior to November 18, 1965.

003.02B Deeds transferring real property wherein the United States of America, the State of Nebraska, or any of their agencies, or political subdivisions is a grantor or grantee. Federally chartered savings and loans and banks are not agencies or political subdivisions of the United States of America, and are not exempt. Banks and savings and loan associations chartered by the state are not agencies or political subdivisions of the state, and are not exempt. Some federal and state instrumentalities may be exempt from the documentary stamp tax by virtue of their governing statutes. Proof of eligibility for exemption ~~shall be presented to~~ may be required by the register of deeds before an exemption shall be granted. The proof of eligibility shall be forwarded to the Department of Revenue by the register of deeds.

003.02C Deeds which secure or release a debt or other obligation such as a mortgage, deed of trust, lien, or contract. Deeds which indicate cancellation of a contract right upon default of a land contract merely secure or release the remaining contractual obligation and are exempt. Deeds which convey legal title upon delivery following satisfaction of a contract are transferring title and are taxable. Deeds given by a debtor to a lender in lieu of foreclosure procedures are entitled to this exemption if the existence of the debt appears on record or can otherwise be proven. A trustee's deed conveying real property back to the original grantor indicating payment of the underlying debt or compliance with the terms of the underlying security agreement is exempt. Contractor's deeds are entitled to this exemption.

003.02D Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest. Deeds transferring property into a grantor's trust are entitled to this exemption. Deeds transferring property to or from owners as tenants in common from or to the same owners as joint tenants are not entitled to this exemption.

003.02E Deeds between husband and wife, or parent and child, including the child's spouse as a joint tenant or cotenant, without actual consideration therefore. Deeds between parent and son-in-law or daughter-in-law without the inclusion of the parents, son or daughter, as the case may be are not entitled to this exemption. Deeds between step-parent and step-children do not qualify for this exemption unless step-children are legally adopted.

003.02F Deeds to or from a family corporation, partnership, or limited liability company, when all shares of stock of the corporation or interest in the partnership or limited liability company are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kinship according to the rules of civil law, and their spouses for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company to such family members, or the return of

the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for this exemption, the family corporation, partnership, or limited liability company, must transfer the title to the property in its own name and not in the name of individual shareholders, partners, or members.

003.02G Tax deeds.

003.02H Deeds of partition, meaning those deeds between joint tenants or tenants in common by which they divide real property so held among them in severalty each taking a distinct part. In order to qualify for this exemption, the joint tenants or tenants in common must each take a part of the jointly held real property. Exchanges of property between persons who do not hold all of the real property exchanged as joint tenants or tenants in common are not entitled to this exemption. The jointly held real property does not have to be part of a contiguous parcel in order to qualify for this exemption.

003.02I Deeds made pursuant to mergers, consolidations, sales, or transfers of the assets of corporations pursuant to plans of merger or consolidation filed with the office of the Secretary of State. A copy of such plan filed with the Secretary of State shall be presented to the register of deeds before such exemption shall be granted. Such copies are to be maintained in the office of the register of deeds for a period of three years. Such copies are not required to be filed of record in the office of the register of deeds for purposes of this exemption. Partnerships do not qualify for this exemption. Deeds made pursuant to corporate reorganizations or restructuring do not qualify for this exemption.

003.02J Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock. Partnerships do not qualify for this exemption.

003.02K Cemetery deeds, meaning those deeds for the sale of cemetery plots.

003.02L Mineral deeds. Timber deeds do not qualify for this exemption.

003.02M Deeds executed pursuant to court decrees including deeds executed in accordance with property settlement agreements approved by court decrees in dissolution of marriages. Deeds given in connection with proceedings under the United States Bankruptcy Code are entitled to this exemption. Any deed given involuntarily pursuant to a court decree is entitled to this exemption.

003.02N Land contracts or memoranda thereof.

003.02O Deeds releasing a reversionary interest, a condition subsequent or precedent, a restriction, a covenant, or any other contingent interest.

003.02P Deeds of distribution, meaning those deeds executed by the personal representative conveying to the devisees or heirs of the real property passing by testate or intestate succession.

003.02Q Deeds transferring real property located within the boundaries of a Nebraska Indian reservation when the grantor or grantee is a reservation Indian.

003.02R Deeds transferring real property into a trust where the transfer of the same property would be exempt if the transfer were to be made directly from the grantor to the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the real property is made under such circumstances as to come within one of the other exemptions specified in this regulation and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue. The statement must specify the underlying exemption.

003.02S Deeds transferring real property from a trustee to a beneficiary of a trust. Deeds transferring real property from a trustee to a non-beneficiary are subject to the tax whether or not proceeds of the sale are to go to the beneficiary.

003.02T Deeds which convey real property held in the name of any partnership, or limited liability company, which is not a family partnership or limited liability company, to any partner in the partnership, member of the limited liability company, or his or her spouse.

003.02U Leases.

003.02V Easements.

003.02W Deeds which transfer title from a trustee to a beneficiary pursuant to a power of sale exercised by a trustee under a trust deed.

(Section 76-902, R.R.S. 2003 and section 76-901, R.S.Supp., 2005.)

REG-52-004 COLLECTION OF TAX

004.01 The registers of deeds of the various counties of the State of Nebraska shall act as tax collection agents in their respective counties for the Tax Commissioner.

004.02 When a deed is presented for recording, the register of deeds shall perform the following before recording the deed:

004.02A Determine if the deed transfers title to the real property located in his or her county;

004.02B Determine the names of the grantor and the grantee;

004.02C Determine if the Real Estate Transfer Statement, Form 521, is completed and signed by the grantee or his or her authorized agent;

004.02D Determine if the deed is subject to exemption <u>based on information presented by the taxpayer and these regulations</u>;

004.02E Determine the full actual consideration and the current market value of the real property transferred;

004.02F If subject to tax, determine the tax using the full actual consideration or the current market value;

004.02G If subject to tax, collect the tax and enter the amount of the tax in the fee book;

004.02H Affix the stamp if a completed Real Estate Transfer Statement, Form 521 is furnished, and complete the stamp as directed in Reg-52-007.

004.03 The Real Estate Transfer Statement, Form 521, prescribed by the Property Tax Administrator , shall be completed, signed and filed with the register of deeds, by the grantee, purchaser or his or her authorized agent at the time the deed is presented to the register of deeds for recording. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of real estate itself, and other factors which may influence the transaction. ~~The statement form is designed so that multiple copies are generated.~~ The register of deeds shall forward the original copy of the statement to the ~~Department of Revenue, two copies of the statement shall be provided to the~~ county assessor~~, and a copy shall be provided to the grantee or purchaser or his or~~

~~her authorized agent~~. If the grantee or purchaser or his or her authorized agent fails to furnish the statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Property Tax Administrator and shall, when directed, forward the statement to the Property Tax Administrator.

004.04 The register of deeds may use the Real Estate Transfer Statement, Form 521, in determining the full actual consideration paid to the grantor by the grantee for the real estate being transferred that is subject to the tax. If the deed is given for less than full actual consideration, or if the deed has no stated consideration, the current market value of the real estate shall be stated on the Real Estate Transfer Statement, Form 521. If all required information is not supplied on the Real Estate Transfer Statement, Form 521, the register of deeds shall not accept the deed for recordation.

004.05 All deeds are presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the deed is exempt under Reg-52-003 . Unless the exemption is proved, no deed shall be recorded unless the tax is paid and the stamp affixed. If an exemption is ~~proved~~ proven, the stamp shall be affixed ~~and~~ with the word "exempt" stated on the stamp, and the applicable exemption number stated on the stamp.

004.06When multiple grantors transfer real property, the tax due from each grantor is based upon their respective portion of ownership of the real property.

004.07The liability for the tax is upon the grantor. The tax may be paid by the grantee or any other agent presenting the deed for recordation.

004.08 Any person shall have access to any filed Real Estate Transfer Statement, Form 521, at the office of the county assessor which has been filed on or after January 1, 1995, and which has not been disposed of pursuant to the records retention and disposition schedule as approved by the State Records Administrator.

(Sections 76-214. 76-902, and 76-904 through 76-908, R.R.S. 2003, and sections 76-901 and 76-903, R.S.Supp., 2005.)

REG-52-005 COMPUTATION OF TAX

005.01 The rate of the tax is two dollars and twenty-five cents for each one thousand dollars of value or fraction thereof.

005.02 The table of value promulgated by the Department of Revenue to assist in determining the tax due shall be used by the register of deeds.

005.03 The register of deeds shall maintain records of the documentary stamp tax collected for purposes of audit for three years.

005.04 The register of deeds is responsible for the money collected for the documentary stamp tax, and this money shall not be commingled with county funds but shall be remitted as required in Reg-52-006.

005.05 The register of deeds shall not accept payment of documentary stamp tax in an amount more or less than that indicated by applying the full actual consideration or current market value, as the case may be, to the table in Reg-52-005.02.

005.06 The register of deeds shall not accept payment of documentary stamp tax before the date of the recording of the deed.

(Sections 76-902, and 76-904 through 76-908, R.R.S. 2003, and sections 76-901 and 76-903, R.S.Supp., 2005.)

REG-52-006 REMITTANCE OF TAX

006.01 The register of deeds shall remit, on the Nebraska Documentary Stamp Tax Return, Form 52, the state portion of the tax collected during each calendar month to the Department of Revenue by the fifteenth of the next succeeding month. ~~The register or deeds shall include with such remittance copies of all Real Estate Transfer Statements, Forms 521, filed during the preceding calendar month.~~ Copies of all Documentary Stamp Tax Refund Claims, Form 53, shall be included in such remittance if the refund was actually paid during the preceding month.

006.02 From each two dollars and twenty-five cents of tax collected, the register of deeds shall retain fifty cents of the net proceeds of the sale of documentary stamp tax collected to be placed in the county general fund. The remainder of the tax collected is the portion that is to be remitted to the state.

(Sections 76-902, and 76-904 through 76-908, R.R.S. 2003, and sections 76-901 and 76-903, R.S.Supp., 2005.)

REG-52-007 STAMP

007.01 The Department of Revenue shall provide each register of deeds with a stamping device to imprint the stamp directly on each deed. Only the stamp provided by the Department of Revenue shall be used for purposes of the documentary stamp tax act.

007.02 It is the responsibility of the register of deeds to see that each deed offered for recording is clearly and legibly imprinted with the stamp provided by the Department of Revenue. However, this stamp is not complete until the register of deeds has placed the following information on the stamp:

007.02A The initials of the register of deeds or his or her authorized assistant who actually collected the tax or recognized an exemption and placed the stamp upon the deed;

007.02B The date of recording;

007.02C The amount of tax collected or the word exempt and

007.02D The applicable exemption number, if exempt.

007.03 Cancellation of a stamp shall be considered to have occurred when the stamp is imprinted directly on the deed, completed as required in Reg-52-007.02, and the deed is recorded.

007.04 The register of deeds shall be responsible for affixing the stamp in such a manner and color that is capable of reproduction.

(Sections 76-902, and 76-904 through 76-908, R.R.S. 2003, and sections 76-901 and 76 903, R.S.Supp., 2005.)

REG-52-008 DEEDS RECORDED IN MORE THAN ONE COUNTY

008.01 Where a deed transfers real property situated in two or more counties, the register of deeds in each county wherein the deed is offered for recording shall ascertain and compute the documentary stamp tax due for the transfer of the real property located within that county and collect the tax. The register of deeds in each county shall affix the stamp as provided in Reg-52-007 and note on the stamp the affixing county.

(Section 76-906, R.R.S. 1943.)

REG-52-009 EXEMPT PORTIONS

009.01 The transfer by deed of real property from multiple grantors or to multiple grantees, wherein one or more grantor or grantee, as the case may be, is granted an exemption as provided in Reg-52-003, is subject to the tax based upon the proportion of legal title or beneficial interest of the real property transferred by the grantors or to the grantees which are not granted such exemption.

009.02 A transfer of a fractional interest to a grantee not entitled to an exemption is subject to the documentary stamp tax upon that fraction of the value of real property transferred.

009.03 A transfer of a life estate or remainder interest to a grantee not entitled to an exemption is subject to the documentary stamp tax upon that portion of the value of real property transferred. The value of such portion is the present value as determined under the provisions of the Internal Revenue Code and its applicable regulations with respect to life estates or remainder interests. The present value of the life estate or remainder interest is determined under 26 C.F.R. 20.2031-7(1999), or as subsequently revised.

(Sections 76-906 through 76-908, R.R.S. 2003, and section 76-901, R.S.Supp., 2005.)

REG-52-010 DEFICIENCY DOCUMENTARY STAMP TAX PAYMENT

010.01 In the event that the Department of Revenue has reason to believe that an exemption was improperly allowed or that the consideration stated was less than current market value as determined in accordance with these regulations, the Department of Revenue shall investigate the transaction to determine if tax is due. Should the Department of Revenue determine that tax is due, it shall issue a Notice of Deficiency Determination to the grantor. The grantor will be allowed to protest the deficiency determination within thirty days of its issuance. Should the grantor file a protest to the Notice of Deficiency Determination, the Department of Revenue shall hold a hearing under the Administrative Procedures Act to determine the correct tax and collect the same. Should the grantor fail to protest the Notice of Deficiency Determination within thirty days, the Department of Revenue shall immediately proceed to collect the same. When the Department of Revenue has issued a deficiency determination, the register of deeds shall not be permitted a percentage of the proceeds thereafter collected by the Department.

(Section 84-913, R.R.S. 1999, and sections 76-906, 77-369, and 77-375, R.R.S. 2003.)

REG-52-011 DECLARATORY RULING ON EXEMPTION

011.01 Any grantor that claims to be exempt from the tax pursuant to Reg-52-003 and has been denied such exemption by a register of deeds may, prior to filing the deed, file a written petition with the Department of Revenue for a declaratory hearing on the exemption.

011.01A A hearing will be granted only if the grantor requests the same or the Department of Revenue so requires. If a hearing is not granted, the ruling will be made on the basis of the petition of the grantor and other information available to the Department of Revenue.

011.01B The petition of the grantor shall contain the following information:

011.01B(1) Name and address of grantor,

011.01B(2) Name and address of grantee,

011.01B(3) Legal description of real property,
011.01B(4) County in which the real property is located,

011.01B(5) Brief statement of basis of exemption,

011.01B(6) Brief statement of reason for register of deeds‘ refusal to grant exemption.

011.01C The Department of Revenue may request additional information whenever it considers the same to be necessary.

011.01D The declaratory ruling when issued shall be binding between the Department of Revenue and the grantor on the facts stated unless the ruling is altered or set aside by a court.

(Sections 76-906, 2003, ~~and~~ 84-912, R.R.S. ~~1943~~ 1999, and section 76-901, R.S.Supp., ~~1992~~ 2005.

REG-52-012 REFUND OF DOCUMENTARY STAMP TAX PAID

012.01 Any person paying the documentary stamp tax may claim a refund if the payment of such tax was the result of a misunderstanding or honest mistake of the taxpayer, the result of a clerical error on the part of the register of deeds or the taxpayer, or invalid for any reason. In order to claim a refund, within two years after payment of the tax, the taxpayer shall file, in the office of the register of deeds of the county in which the tax was paid, a Documentary Stamp Tax Refund Claim, Form 53, and evidence in support thereof.

012.02 Within 30 days the register of deeds shall make a recommendation of approval or disapproval and forward all copies of the Documentary Stamp Tax Refund Claim, Form 53, to the Tax Commissioner.

012.03 Within 30 days of such recommendation, the Tax Commissioner shall approve or deny the claim for refund in whole or in part.

012.04 Within ten days of such approval or denial, the Tax Commissioner shall forward a copy of the form showing his or her decision to the last-known address of the taxpayer by certified mail. The Tax Commissioner shall also within ten days of such approval or denial forward to the register of deeds two copies of the form showing his or her decision.

012.05 The register of deeds shall maintain the original refund claim form as a file copy and shall forward the other copy to the Tax Commissioner with the Documentary Stamp Tax Return, Form 52, for the month in which the refund was actually paid.

012.06 Upon approval by the Tax Commissioner of a refund, the register of deeds shall make the refund from documentary stamp tax funds currently on hand.

012.07 After funds are actually refunded from currently collected documentary stamp tax funds, the amount actually refunded shall appear on the monthly return required by Reg-52-006.

012.08 A taxpayer denied a refund under this section in whole or in part may appeal the decision of the Tax Commissioner in the manner and within the time provided by sections 84-917 to 84-919, of the Nebraska Revised Statutes.

(Sections 76-906 and 76-908, R.R.S. 2003.)