



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708-8933 ● FAX (608) 266-5718

REAL ESTATE TRANSFER NEWS

January, 1992

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and statutes:

- 1Q. On which transaction is a transfer fee due when only one deed is recorded by a relocation company?
 - A. When one deed is recorded from the person being relocated to the ultimate buyer, then the fee is based on the sale price to the ultimate buyer. The Department still maintains that when two deeds are recorded, one from the person being relocated to the relocation company and then from the relocation company to the ultimate buyer, two fees are due. Exemption 9, as agent to principal, does not apply since there are in fact two separate sales.

- 2Q. Per a sheriff's sale, an apartment is conveyed to a third party and a fee is due, but what exclusion from DILHR's Rental Weatherization Program applies?
 - A. None, the conveyance is subject to the code. Questions regarding the Weatherization Program should be directed to Jerry Marx, DILHR, Safety and Buildings, 210 E. Washington Ave., Box 7969, Madison, WI 53707-7969 or by telephoning (608) 266-1930.

- 3Q. A mortgagor files bankruptcy after a foreclosure action was begun to prevent an entry of a judgment of foreclosure against the debtor. Now the trustee in bankruptcy wants to sell the property back to the lender, is a fee due?
 - A. Providing the plaintiff or person holding a mortgage (mortgagee) on the property is the recipient of the conveyance, the use of exemption 14 would apply. A conveyance to a party not holding a mortgage (third party) would be subject to fee per Tax 15.01(10), Wis. Adm. Code.

- 4Q. What fees are due on the land contracts described below:
"A" sells to "B" on an original land contract for \$50,000; later "B" sells on original land contract to "C" for \$60,000; the land contracts are now satisfied; "C" gets a deed signed by both "A" and "B", what is the fee due when recording the one deed?
 - A. The fee is based upon both sales for a total fee due of \$330.00. If two deeds were recorded, one from "A" to either "B" or "C" and one from "B" to "C", a fee is due on each based on their respective sales price for a total fee due of \$330.00.

- 5Q. When one spouse is sole title holder and both are obligated under a mortgage note on the property, is a fee due when the one spouse conveys title to both for marital property purposes?

- A. No, provided the property was originally purchased by both of them and they both signed the mortgage note at the time of the purchase. A transfer return is required and is exempt per exemption 3.
- 6Q. An amendment is made to an original land contract in the amount of \$200,000 recorded in 1979, changing the value to \$125,000. When this amendment is recorded, is a transfer return needed?
- A. No, provided that the amendment refers to the original land contract as recorded. The deed, return and fee accompanying the deed in satisfaction should refer to both the original land contract and the amendment.
- 7Q. Can a utility company inspect transfer returns when they are acquiring real property (in-lieu-of-condemnation) for right-of-ways?
- A. No. Only the current property owner or the owner's agent can inspect the returns in condemnation proceedings per s. 77.23(2), Stats. Also, a governmental agency such as the Department of Transportation, may inspect the returns when acquiring real property for public purposes.
- 8Q. How do you file an amended transfer fee return and pay an additional transfer fee when the deed was originally recorded but had an erroneous exemption placed on it?
- A. The person must send a copy of the recorded deed along with a completed amended transfer return showing the fee due to the Department of Revenue, Bureau of Utility & Special Taxes. The check for the correct additional fee must be made out to Wisconsin Department of Revenue. The Bureau may assess additional interest due, but may waive the penalty when an originally recorded document is corrected prior to it being audited.
- 9Q. May exemption 3 which partially states "for no or nominal consideration" be used for a conveyance in which there is no consideration (debt assumption or cash) given by the grantee?
- A. NO - the exemption is for a deed which does not convey an interest in real property but only corrects, confirms or reforms a deed previously recorded AND which is for no or nominal consideration. Line 18 of the return should indicate the type of transfer as "Other" and explain "correcting document number _____".
- 10Q. Spouses convey to a 3rd party (agent/strawperson), then the strawperson conveys back to the Husband and Wife - What exemption applies on these conveyances?
- A. The conveyance to a strawperson and then right back to the spouses is sometimes used for marital property purposes. The use of exemption 9 on both of these deeds is proper.

Black's Law Dictionary 6th Edition defines a Strawperson as ". . . one who acts as an agent for another for the purpose of taking title to real property and executing whatever documents and instruments the principal may direct respecting the property . . ."

11Q. Are Christmas Trees exempt from transfer fee as personal property when sold standing and will be harvested in the future?

A. No, uncut Christmas trees are considered real property per s. 77.21(1m), Stats.

12Q. When are transfer returns required for time-share recordings?

A. Generally, a return and fee are due when the deed recorded indicates a fixed time as to starting and ending date of occupancy for a specific unit. Example: Unit 2 (specific unit) is sold for the period of week 52 (fixed time), a return and fee are due. When week 52 is sold and any unit may be used, the transaction is considered personal property and sales tax is due. If a sales tax is due (see attached addendum) a transfer fee is not due.

13Q. "A" gets a business loan using his/her personal home as collateral. "A" defaults and bank forecloses and takes personal residence, does exemption 14 (s. 77.25(14), Stats.) apply?

A. Yes, since the personal residence went to the person holding a mortgage under foreclosure, exemption 14 applies.

14Q. Is a transfer fee imposed upon the transfer of real property on the reservation by an enrolled tribal Indian to another enrolled tribal Indian?

A. No, since the transfer occurred on the reservation by a reservation Indian, the state does not have jurisdiction to impose a fee. The transfer return should indicate exemption 2 and explain on line 18 that this was a transfer by a reservation Indian on the reservation.

15Q. How do you determine if land conveyed is Indian Reservation land and exempt per exemption 2 when county records do not indicate the boundaries of the reservation lands?

A. When the county does not have prior documentation of reservation lands, you may assume the transfer return to be correct when claiming the real estate as reservation property. You may want to use the information on the return as documentation to indicate the reservation lands in your county.

16Q. Is a school district considered an instrumentality, agency or subdivision of the state or United States for the use of exemption 2?

A. Yes, see Question 10 in REAL ESTATE TRANSFER NEWS, MARCH 1983.

17Q. For real estate transfer fee purposes, is a foreclosure sale by the U.S. Marshal any different than a sale by the County Sheriff?

A. No, they should be treated the same for transfer fee purposes. Exemption 14 only applies when the deed goes to a person holding the mortgage or to the vendor of the land contract.

18Q. Is a fee due on the following conveyance to a trust?

Husband and wife create a trust in which they are the beneficiaries while they are living. After their deaths, all property will be conveyed to a non-profit corporation, the secondary beneficiary. Upon conveying the real estate to the trust, the trust is to sell the property and invest the proceeds in the purchase of stock and bonds and pay out annuities. This method of conveyance was done for the tax advantages of having the trust sell the property rather than the individuals.

A. The use of exemption 9 between agent and principal would apply since the trust is to act as agent and immediately sell the real property (such sale to be subject to the fee) and purchase stock and bonds. The use of exemption 16 would be improper since a direct conveyance from the Grantor to the Beneficiary (non-profit corporation) would not be exempt under s. 77.25, Stats.

19Q. Now that Railroads are required to pay a transfer fee when recording with the Secretary of State, are they also going to pay a transfer fee when they record the same conveyance with the county?

A. No, if they record first with the Secretary of State and pay the transfer fee, they can use s. 77.25(3), Stats. when recording the SAME conveyance with the county. Likewise, if they first record with the county and pay a transfer fee they can use exemption 3 if they record the same conveyance with the Secretary of State. Exemption 3 is for a deed which confirms, corrects or reforms a conveyance previously recorded.

20Q. Is a recorded contract or deed for the sale of top soil subject to a return and fee?

A. Yes, as are mineral deeds and sales of standing timber.

- 21Q. Is a recorded Boundary Line Agreement subject to a return and fee?
- A. No. Unless the facts indicate otherwise, it may be assumed that this agreement is clarifying what the owners already own.
- 22Q. A corporation is to purchase all of the outstanding common stock of another unrelated corporation (New Subsidiary) and then merge that corporation into the "Parent" corporation. The "Parent" corporation thus becomes the owner of all the property owned by the previously existing "New Subsidiary". Are deeds filed reflecting the above ownership change subject to the fee?
- A. No - Exemption 6 applies, sec. 77.25(6), Stats. Mergers of corporations means the combination of two or more corporations under a plan of consolidation.
- 23Q. Is a transfer from the Red Cross subject to the transfer fee?
- A. No, it has been determined the Red Cross is a government entity consequently the conveyance is exempt [77.25(2)]. [Department of Employment et. al. v. U.S., 385 US 355,(1966)].
- 24Q. Please give some examples of the use of exemption 3 [77.25(3)].
- A. A deed which confirms, corrects or reforms is a deed which would make firm, strengthen or remove defects of title of a deed previously recorded. Some examples would be:
- A. A correction deed filed to correct the legal descriptions or the names of the grantees.
- B. A Boundary Line Agreement.
- C. A railroad deed filed with the Secretary of State after first being filed with the county.
- 25Q. Please clarify Question 21 of your February 1991 Real Estate Transfer Newsletter. It stated:
- "Is a transfer from the husband to the same husband and wife changing the classification of the property for marital property purposes taxable if the property is subject to a mortgage?
- Yes. The debt obligation takes the transfer out of the protection of sec. 77.25(8), Stats., even if it is solely for marital property classification purposes."
- A. We stand by this answer. If, however, a spouse's interest in the property is subject to collection for debt on the property, the transfer resulting from a retitle of the property to add the other spouse's name is not subject to the transfer fee.

ADDENDUM TO
THE REAL ESTATE TRANSFER FEE NEWSLETTER
JANUARY, 1992

TIME SHARES AND SALES TAX

Chapter 707 of Wisconsin Statutes defines time-share ownership and divides time shares into two categories. "Time-share easements" are defined in sec. 707.02(25) and "time-share estates" are defined in sec. 707.02(26).

Sales tax is due on the entire purchase price of "time-share easements."

Sales tax may or may not be due on "time-share estates" depending on the circumstances involved. The various treatments are as follows:

- 1) Campgrounds. The purchaser receives a deed for undivided interest in multiple units (campsites). The primary purpose of this transaction is the access to recreational facilities (camping is inherently recreational) with an incidental ownership in real property. The entire purchase price is subject to sales tax under sec. 77.52(2)(a)2 including maintenance and operation fees (which may include a pro rata portion of the real estate taxes). The sales tax on time-shares under 77.52(2)(a)2 became effective May 17, 1988.
- 2) Condo's, cabins, etc. where the purchaser receives a deed for undivided interest in multiple units. The primary purpose of the transaction is the access to rooms or lodging with an incidental ownership in real property. If the purchase price provides rooms or lodging for a continuous period of less than one month, the entire purchase price is subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., including required maintenance and operating fees (which may include a pro rata portion of the real estate taxes).
- 3) Condo's, cabins, etc., where the purchaser receives an undivided interest in a single unit and the use of the rooms or lodging are fixed in actuality and practice at the time of sale as to the starting day and lodging unit. The primary purpose of this transaction is the purchase of real property and thus not subject to sales tax on any portion of the purchase price, including maintenance and operation fees for that facility.
- 4) Condo's, cabins, etc., where the purchaser receives an undivided interest in a single unit and the use of the rooms or lodging are not fixed in actuality and practice at the time of sale as to the starting day and lodging unit. The primary purpose of the transaction is the access to rooms or lodging with an incidental ownership in real property. If the purchase price provides rooms or lodging for a continuous period of less than one month. The entire purchase price is subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., including required maintenance and operating fees (which may include a pro rata portion of the real estate taxes).

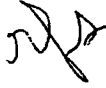
The sales tax treatment of time-shares under sec. 77.52(2)(a)1 Wis. Stats., became effective August 9, 1989.



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TO: Register of Deeds

FROM: Robert F. Steffes, Director
Bureau of Utility & Special Taxes
Division of State & Local Finance 

RE: January 1992 RETF Newsletter
Criteria for Completing a Real Estate Transfer, Form PE-500

DATE: January 21, 1992

I have enclosed two copies of the "Real Estate Transfer News," dated January 1992. Please share this "newsletter" with your local Bar and Real Estate Associations. Our mailing includes the State Bar of Wisconsin and the Wisconsin Realtors Association.

As explained in my letter to you last August, two new exemptions from the fee became available to conveyers of property effective for conveyances on or after January 1, 1992. They are:

1. Conveyances by gift, to the United States or to this state or to any instrumentality, agency, or subdivision of either.
2. Conveyances under sec. 236.29(1) or (2) [Dedications] or 236.34(1)(e) (certified survey map), Stats., or for the purpose of a road, street, or highway, to the United States or to this state or to any instrumentality, agency, or subdivision of either.

These exemptions are reprinted on the latest version of the Real Estate Transfer Return Form, PE-500 (R. 10/91).

As in the past, the older versions of the transfer fee return are acceptable as long as they are completed in accordance with the "Criteria for a Completed Real Estate Transfer Return (PE-500 R. 10/91)." A copy of the updated "Criteria" is included for your convenience. Please note the "Criteria's" instruction for line 27, Part VII of the new transfer return. It indicates that if exemption 3 (sec. 77.25(3), Stats.) is used, the document number being corrected should be listed on line 18. This is also explained in the transfer return's instructions for filling in line 18.

Neal Schmidt, Attorney for our Department, will be at your Winter Seminar to answer any questions you may have. If you need help at any other time, please call Russel Reppen or myself at 266-1594 or 266-3964 respectively.

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Enclosure