

State of Wisconsin\* DEPARTMENT OF REVENUE 0 DIVISION OF STATE AND LOCAL FINANCE  
BUREAU OF UTILITY AND SPECIAL TAXES 0 P.C. BOX 8933 0 125 SOUTH WEBSTER STREET 0  
MADISON, WI 53708-8933

**REAL ESTATE TRANSFER NEWS June 1996**

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes. Should you have any questions, please write to:

Bureau of Utility & Special Taxes Wisconsin Department of Revenue P.O. Box 8933  
Madison, WI 53708-8933

1.Q. Is it true that the Registers of Deeds are totally responsible for making sure the transfer form is filled out completely?

A. Yes. The statutes are clear on this point. A completed return is a prerequisite for acceptance of a deed for recording ( s. 77.22(1), Stats.). See Criteria for A Completed Real Estate Transfer Return, (PE-100) for what is considered complete.

2.Q. What does Exemption #18 refer to in relation to a conveyance?

A. Section 229.42 of the Wisconsin statutes authorized cities, villages, towns, and counties to create local exposition districts. A municipality may create a special purpose district that is a unit of government. This unit of government may acquire property to be used primarily for conventions, expositions, trade shows, musical or dramatic events, or other events involving educational, cultural, or commercial activities, and not primarily for recreational or sporting activities. A property transferred to a local exposition district is exempt from the transfer fee by s. 77.25(18), Stats. A transfer from the district would be exempt by s. 77.25(2), Stats.

3.Q. Please explain the concept of property exchanges and what to do if one exchanged property has a higher value than the other?

A. Two separate and distinct conveyances are involved and the value is separately determined for each property as described per Tax 15.02(2), Wis. Adm. Code:

**EVEN VALUES** - In an exchange of property where the properties have the same market value, two transfer returns would be filed paying the same fee. For example, my lake front property traded for your small farm, both valued at \$100,000. Two returns, two fees of \$300. The key is the consideration paid or to be paid. I traded my property (consideration of \$100,000) for your property.

3.Q. Please explain the concept of property exchanges and what to do if one exchanged property has a higher value than the other? (Continued from page 1).  
ONE PROPERTY WITH HIGHER VALUE - The farm property is worth \$120,000 while the lake property is worth \$100,000. I would need to give you \$20,000 and my property to have an equitable exchange agreement. The return that reports the farm would have a fee liability of \$360.00 and the lake property return would be \$300.00. Note that where extra consideration is given, the fees are based upon the exchanged properties' fair market value. See the definition of value in EXCHANGE at s. 77.21(3)(b) Stats.

4.Q. What is the complete definition of partition? Explain the partition of real property between siblings that they have received as co-owners from their parents' estate?

A. Partition is "The dividing of lands held by joint tenants, coparcener, or tenants in common, into distinct portions, so that they may hold them in severalty, either by mutual agreement or court-ordered. " Partition does not create or convey a new or additional title or interest, but merely severs the unity of possession as defined in GUIDELINES (Dec. 1994) p. 9 and s. 77.21(1k), Stats.

Example: Three children were deeded their parents' home and business properties as co-owners (tenants-in-common) from their parents' estate. It is assumed that the children are equal co-owners and the value of the co-owned property for each child is \$400,000 (\$1,200,000 divided by 3).

The three children now want to own the properties individually. The home worth \$300,000 is deeded to the first child, the second child is deeded the bakery worth \$400,000, and the third child is deeded the flour mill. Three deeds are filed by the co-owners as the ownership entity of ABC; they are children ABC to A, ABC to B and ABC to C.

Deed ABC to A - received the home worth \$300,000. Exemption #5, no fee.

Deed ABC to B - received the bakery worth \$400,000. Exemption #5, no fee. Deed

ABC to C - received the flour mill worth \$500,000. A fee of \$300 is paid on \$100,000, (\$500,000-\$400,000).

The transaction is partially exempt as partition because not all the children ended with the same value as they started with. One child partially sold or exchanged their undivided interest in the three properties.

5.Q. How important is it that the "grantor's address" is on the transfer form?

A. The return is incomplete without it.

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6.Q. Under what circumstances may we accept deeds (instruments) without a transfer return?

A. When a deed or other instrument is presented for recording without a transfer return, there needs to be some instruction on the document for the Registers' to form a judgment for acceptance or rejection.

Examples of "nonconveyances" of real property where no returns are needed:

a. The recording of a document from an existing partnership converting to a limited liability partnership (LLP): (see Question II below)

"This is not a conveyance per s. 77.21 (1), Stats. and is not subject to transfer return or fee. This is a confirmation deed pursuant to s. 178.40, Stats. to give notice of an existing partnership converting to a limited liability partnership. "

b. Husband and wife as "joint tenants with right of survivorship" to reclassify title as "survivorship marital property":

'Same parties changing the classification of title and is not a conveyance per s. 77.21 (1), Stats. and is not subject to transfer return or fee.

c. An option or right of first refusal to purchase:

'This is an option (or right of refusal to purchase) and is not a conveyance per s. 77.21 (1), Stats. and is not subject to transfer return or fee Per Tax 15.

01, Wis. Adm. Code. -

Memorandums, notices, etc., need a transfer return unless nonconveyance is claimed as in the examples above. The claiming of an exemption that does not need a return (exemptions 1, 2r, 4, and II and above cited examples) must be the responsibility of the parties to the transaction and not the Registers of Deeds. The Registers should never accept such claim of exemption verbally.

7.Q. Is a legal description required on the transfer return?

A. Yes. Lines 9 - 14 are complete if the appropriate box is checked and all of the applicable questions are answered. This includes Line 14. It is the WDOR's decision that if Line 14 - Legal Description is not filled out, the transfer return is considered incomplete. This applies wherever the property is located, e.g., Town, Village or City.

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8.Q. Must a tax parcel number be included on Line 11 if the property qualifies for the Lottery Credit and Line 16 - Primary Residence for Lottery Credit is checked?

A. Yes. The transfer return is incomplete without the tax parcel (key) number. This number is also required to be on the document of conveyance in certain counties per s. 59.514(1), Stats. and municipalities per s. 59.514(2), Stats. Act 201 of 1995 rennumbers these respective sections to be s. 59.43(7)(a) and s. 59.43(7)(b).

9.Q. What is considered confidential information as reported on the transfer form?

A. All information on the return. Requests for inspection of transfer returns should be referred to the proper Bureau of Equalization District Office that oversees the county in which the property is located. The county may use the return to develop a tract index if the county does not reveal social security numbers of any buyers or sellers per s. 77.265(8), Stats.

10.Q. I sold my ginseng farm. Is the ginseng crop considered real property and subject to the transfer fee?

A. Yes; s. 77.21(lm), Stats. defines real estate as including roots, vines and trees of perennial crops. Cranberries and Christmas trees are also included in this definition. This property is exempt from local property tax per s. 70.11(30), Stats., and its value must be reported on Lines 24 AND 25 of the return.

11.Q. In a prior newsletter (RETN 11/95), a direct conveyance from a limited or general partnership to a limited liability company (LLC) requires a fee. What about a deed from a partnership to a limited liability partnership (LLP)?

A. The provisions of Act 97 provide for the creation of an LLP by registration with the Secretary of State per s. 178.40, Stats. and s. 178.41(2)(a), Stats. This statute establishes that the LLP is the same partnership that existed before registration. There is no requirement to record anything with the Register of Deeds. The new LLP may wish to give notice through a recording with the Register of Deeds. There will be no return and fee required if the document being recorded shows it is not a conveyance but is a confirmation deed pursuant to S 178.40, Stats. (See Question #7 above.) If the instrument being recorded does not make it clear that its sole purpose is to convert to an LLP, a transfer return is required. Please provide the proper information for ease of supervision.

12.Q. When a "MEMORANDUM OF LEASE" of mineral or timber is recorded, are a transfer return and fee required?

A. Yes. Any instrument used for the conveyance of timber and mineral rights (includes topsoil and gravel) is a conveyance of real property interest per S. 77.21(lm), Stats.

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13.Q. Explain the difference between Exemption numbers 9 and 16?

A. Exemption #9, with respect to a trust, exempts a conveyance of property titled in

the trust (a separate legal entity) to the beneficiary of that trust. Exemption #16 exempts the conveyance to the trust on the condition that the grantor of the trust could convey the property free of transfer fee directly to the beneficiary of the trust. You could for example, give your home to your son and daughter-in-law tax free because of Exemption 8. However, if you elect to transfer this property to your trust, your son is the primary beneficiary of the trust. This conveyance would be exempt under Exemption #16 since, had the conveyance gone directly to the child, Exemption #8 would apply.

14.Q I filed my deed and paid the transfer fee in the wrong county. How do I get a refund so I can record and pay the fee in the correct county?

A. Filing deeds and the payment of fees in the wrong county is the most frequent reason for refunding of transfer fees. The following steps must be completed

before a refund is issued:

1. Rerecord the deed and pay the fee again in the proper county. 2. Send to the Bureau of Utility & Special Taxes:

a. Copy of both recorded deeds or the one rerecorded deed, showing fees paid to both counties.

b. A letter explaining the situation and designating who should get the refund. Since the fee is assessed against the grantor, refunds are issued to the grantor. However, as with most improper recordings, the title company advances the fee in the proper county and then requests the refund be issued to them.

15.Q. How should I complete the transfer return when I am filing a deed correcting the legal description of a conveyance previously recorded?

A. The transfer return that accompanies an instrument for recording needs to show what type of transaction that has occurred. If the original document was the result of a sale and bank financing was provided, then the original return at Line 18 should have been checked "Sale" and at Line 28, box c. "Financial Institution" should have been checked. The "correction deed" return should identify what the accompanying deed is doing. Line 18 should be checked "Other" and an explanation such as "this deed corrects the legal description on deed document number (enter doc. number)" and at Line 28, box d. "No Financing Involved" should be checked. Complete the rest of the return as the original was completed

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16.Q. Where may information on the "energy " section of the return be obtained?

A. Any questions regarding the "energy code" should be directed to DILHR-Weatherization at (608) 266-1930.

17.Q. Where may information on the Lottery Credit be obtained?

A. Any questions regarding Lottery Credit should be directed to: Wisconsin Department of Revenue, Lottery Credit Program, P.O. Box 8933, Madison, WI 53708-8933. Telephone Numbers: (608) 266-9457 and (608) 264-6892.

18.Q. Please clarify the Department's position on what value is to be reported on a return reporting the sale of land only where a construction mortgage is recorded directly following the deed. Is this position the same where a construction contract is entered contemporaneously with the builder who is also the seller of the lot?

A. As addressed in RETN, 11/95, Q. 6; where the purchase of property is subject to a construction contract, the value subject to the fee is the total "package" purchase price. When a builder or developer sells vacant land with the condition that a designated builder will build improvements thereon, the total conveyance is contingent upon this condition. To prevent the buyer from contracting with another builder the sales contract generally contains penalties for such actions. These remedies normally include rescision of the sale and the right to substantial damages. If the seller can hold the buyer to the construction contract as part of the land conveyance, it is a conveyance of both the real estate and the future improvements thereon. Recording of the financing of the real estate and the relationship of that amount to the value as shown on the transfer return often indicates that more than just a vacant lot was purchased. The second part of question 18 is Yes.

19.Q. How do you complete a transfer return reporting a sale of land including a construction contract as described in question 18 above?

A. Prepare all parts as required with the following special entries:

Part 111. ENERGY - use W-5 when the building is less than 10 years old based on the building pen-nit.

Part V. Line 15. Kind of property - check Land Only AND Other (explain) construction contract.

Line 16. Primary use - one box must be checked regarding primary use by the grantee.

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19.Q. How do you complete a transfer return reporting a sale of land including a construction contract as described in question IS above? (Continued from page 6.)

Lottery Credit - DO NOT check box. Since the lottery credit requires the property to be the primary residence, application with the County Treasurer must be made after the home is built.

Part VI. Line 18. Type of transfer - check sale and explain "lot and construction contract".

Part VII. Line 25. The total value of REAL ESTATE transferred is the TOTAL consideration paid, or to be paid of the lot and construction contract.

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