

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R181-01

February 14, 2002

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-6, 13 and 18, NRS 360.090 and 375.015; §§7-10, NRS 360.090, 375.015 and 375.320; §11, NRS 360.090, 375.015 and 375.030; §12, NRS 360.090, 375.015 and 375.310; §§14, 15 and 19 NRS 360.090, 375.015 and 375.020; §16, NRS 360.090, 375.015 and 375.090; §17, NRS 360.090, 375.015 and 375.060.

Section 1. Chapter 375 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *“Agency agreement” means a written agreement pursuant to which a legal representative may act on behalf of another person.*

Sec. 3. *“Fractional interest” means an interest in a portion of real property. A person who holds a fractional interest in real property has no rights in another owner’s fractional interest in that property.*

Sec. 4. *“Joint tenancy” or “joint tenants” means a relationship in which two or more owners hold identical interests in real property simultaneously by the same instrument and with the same right of possession. A joint tenant has a right of survivorship to the other joint tenant’s share.*

Sec. 5. *“Legal representative” has the meaning ascribed to it in NRS 167.020.*

Sec. 6. *“Tenancy in common” or “tenants in common” means a relationship in which two or more owners hold the same real property by unity of possession but by separate and*

distinct titles with each person having an equal right to possession of the property but having no right of survivorship.

Sec. 7. 1. *A hearing conducted by a hearing officer appointed by a county pursuant to NRS 375.320 may not be conducted according to the technical rules of evidence. Any relevant evidence may be admitted, except where precluded by law, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs, even though the evidence might be subject to objection in civil actions.*

2. Hearsay evidence, as that term is used in civil actions, may be admitted for the purpose of supplementing or explaining other evidence, but hearsay evidence is not sufficient to support findings of fact unless it would be admissible over objection in civil actions.

3. The rules of privilege must be applied by the hearing officer as they are applied in civil actions.

4. Irrelevant, cumulative and unduly repetitious evidence is not admissible, nor is incompetent evidence, as that term is used in civil trials, with the exception of hearsay evidence as provided in subsection 2.

5. The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, even though the evidence would otherwise be subject to objection.

6. The hearing officer or any party to any proceeding may cause the depositions of witnesses to be taken in the manner prescribed by law and the rules of the court for depositions in civil actions.

7. The affidavit of any person may be admitted into evidence if all the parties stipulate and consent to its admission.

Sec. 8. *A hearing officer appointed by a county pursuant to NRS 375.320 may take official notice of the following matters:*

1. Any petition for a hearing on any matter pertaining to an appeal of an assessment of real property transfer tax.

2. Matters of common knowledge and technical or scientific facts of established character.

3. Official documents, if pertinent, when properly introduced into the record of formal proceedings by reference if proper and definite reference to the document is made by the party offering it and it is published and generally circulated so that all the parties of interest at the hearing have an opportunity to examine it and present rebuttal evidence.

4. Matters that may be judicially noticed by the courts of this state.

Sec. 9. *1. In any hearing, a hearing officer appointed by a county pursuant to NRS 375.320 may order briefs filed within such time as he allows.*

2. Briefs must be filed with the hearing officer and be accompanied by an acknowledgment or an affidavit showing service on all other parties of record.

Sec. 10. *1. After the hearing of a contested case, a hearing officer appointed by a county pursuant to NRS 375.320 shall prepare findings of fact, conclusions of law and his final decision on the issues presented in the hearing.*

2. The hearing officer shall service a copy of his findings of fact, conclusions of law and decision upon all the parties of record within 60 days after the date of the hearing.

3. The decision of the hearing officer is a final decision for the purposes of judicial review.

Sec. 11. 1. *The county recorder may waive or reduce the penalty or interest for a delinquent payment of real property transfer tax that was imposed pursuant to subsection 3 of NRS 375.030 if he finds that the delinquent payment occurred:*

(a) Because of circumstances beyond the control of the taxpayer who was required to make the payment and occurred despite the exercise of ordinary care and without intent;

(b) Because of justifiable negligence or inadvertence; or

(c) For other good cause shown.

2. *Any application for a waiver or reduction of the penalty or interest for a delinquent payment must be filed in writing with the recorder within 45 days after receipt of the notice of penalties and interest. The taxpayer must set forth in the application the circumstances that caused the delinquent payment.*

3. *In determining whether the circumstances that caused the delinquent payment were beyond the control of the taxpayer required to make the payment, the county recorder shall consider evidence which shows that the delinquent payment was caused by circumstances that were not directly related to the actions of the taxpayer, including, without limitation, fire, earthquake, flood or other acts of God, theft, the death or illness of the taxpayer or a member of the immediate family of the taxpayer, an error or the misconduct of an employee of the taxpayer, erroneous information provided to the taxpayer by the recorder's office and the misaddressed but timely mailing of the payment. The existence of an event described in this subsection does not create a conclusive presumption of eligibility for a waiver or reduction of the penalty or interest on a delinquent payment pursuant to this section.*

4. If the county recorder finds that a delinquent payment was caused by circumstances beyond the control of the taxpayer required to make the payment, and the delinquent payment occurred despite the exercise of ordinary care and without intent:

(a) The penalty assessment for the delinquent payment will be not more than:

(1) Two percent of the tax if the payment is not more than 2 days late.

(2) Four percent of the tax if the payment is not more than 5 days late.

(3) Six percent of the tax if the payment is not more than 10 days late.

(4) Eight percent of the tax if the payment is not more than 15 days late.

(b) The interest on the delinquent payment will be reduced by the rate of reduction of the penalty applied by the county recorder pursuant to paragraph (a).

5. In determining whether the proximate cause of the delinquent payment was for good cause shown, the county recorder shall require, without limitation, the taxpayer to submit evidence that the assessment of penalties and interest:

(a) Constitutes an extreme financial hardship to the taxpayer;

(b) Is equal to or greater than two-thirds of the amount of tax which is due; or

(c) Is extremely unfair or inequitable under the circumstances.

6. The county recorder shall not consider an application to waive or reduce penalties or interest, or both, imposed upon a taxpayer if the assessment of tax is accompanied by the assessment of a penalty based upon negligence, fraud or intent to evade the tax.

7. As used in this section, “extreme financial hardship” means that the person who owes the tax has the present ability to pay the tax, but payment of the penalties and interest will render the person insolvent and, if applicable, unable to continue in business.

Sec. 12. *1. The provisions of NAC 375.180 to 375.200, inclusive, do not afford a person claiming a refund a right to a hearing conducted by a hearing officer appointed by a county pursuant to NRS 375.320.*

2. A claim for a refund must be accompanied by:

(a) A statement setting forth the amount of the claim;

(b) A statement setting forth all grounds upon which the claim is based;

(c) All evidence the claimant relied upon in determining the claim, including affidavits of any witnesses; and

(d) Any other information and documentation requested by the county recorder.

3. If a person files a claim for a refund in a contested case, all contested cases involved in the case shall be deemed to have been raised in the claim.

Sec. 13. NAC 375.010 is hereby amended to read as follows:

375.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 375.020 to 375.140, inclusive, *and sections 2 to 6, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 14. NAC 375.150 is hereby amended to read as follows:

375.150 The following examples are given to illustrate methods of determining value or the tax base on which to compute the *real property transfer* tax:

1. A, *the* owner of a residence, ~~on which he has a mortgage loan of \$10,000, sold the property for \$25,000 and purchaser assumed the \$10,000 encumbrance on the property. The tax is based on \$15,000, the gross consideration minus the existing mortgage, which is the amount A received for his equity in the property. The result would have been the same if the purchaser has not assumed the mortgage. In either event, the existing mortgage on the property is not removed~~

~~by the sale. Where realty is purchased subject to an existing mortgage, the mortgage is not removed by the sale of realty, even though the purchaser, by direct negotiation and agreement with the mortgagee, and independently of the contract of sale, pays off the mortgage at the time title to the property is conveyed to the purchaser. This is because the election to pay the mortgage is not a part of the contract of sale.~~

~~—2.— It is assumed the facts are the same as in example 1, except that the purchaser paid \$10,000 in cash, and for the balance of \$5,000, A took a second mortgage on the property. The basis for the tax would be the same as in example 1 (\$15,000), since the mortgage placed on the property as a result of the sale cannot be deducted in determining the net consideration.~~

~~—3.—] sold the residence for \$250,000. The tax is based on \$250,000, the amount paid for the property.~~

2. A, the owner of certain real estate, sold it to B for ~~[a consideration of \$4,000.]~~ **\$144,000**. B paid the amount of ~~[\$2,500]~~ **\$25,000** in cash, leaving a balance of ~~[\$1,500.]~~ **\$119,000** and “A” gave B a deed to the property. The tax is computed on ~~[\$4,000.~~

~~—4.—] \$144,000, the amount paid or to be paid.~~

3. The holder of a trust deed in the amount of ~~[\$2,000]~~ **\$120,000** foreclosed upon the property securing the deed. At the foreclosure sale, because of taxes and additional expenses incurred, the ~~[holder of the trust deed bid in the property for \$2,500.]~~ **trustee bid \$122,500**, and a trustee’s deed was issued to ~~[him. The purchaser]~~ **the beneficiary. The beneficiary** then accepted a mortgage in the amount of ~~[\$1,500]~~ **\$125,000** as consideration for the retransfer of the property to the former owner. The tax on the trustee’s deed should be computed on the amount bid for the property plus any costs ~~[paid by the purchaser at the foreclosure sale.]~~ , **in this example \$122,500**. The deed from the ~~[purchaser]~~ **beneficiary** to the former owner of the property is a

conveyance of realty sold , and the tax should be computed upon the amount paid, namely

~~[\$1,500.~~

~~—5.—~~ *\$125,000.*

4. For a full ~~[consideration of \$50,000,]~~ *purchase price of \$500,000*, A conveys to B land on which there is an encumbrance of ~~[\$10,000]~~ *\$410,000* at the time of sale. ~~[At time of sale,]~~ A signs a contract agreeing to pay off the encumbrance at a later date. The deed of conveyance from A to B is subject to ~~[stamp]~~ tax on ~~[\$50,000.~~

~~—6.—~~ *the full purchase price of \$500,000. The fact that the seller retained a contractual obligation on the property does not diminish the amount that B will pay, \$500,000.*

5. A, the owner of certain real estate, sold it to B for a consideration of ~~[\$4,000.]~~ *\$240,000*. B paid the amount of ~~[\$2,500]~~ *\$125,000* in cash, leaving a balance due of ~~[\$1,500.]~~ *\$115,000*. A accepted bonds of the Home Owners' Loan Corporation for the balance of ~~[\$1,500]~~ *\$115,000* and gave B a deed to the property.

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~~[Question. Should the stamp tax be based upon the original purchase price, or upon the balance of \$1,500? Answer. The consideration for the deed conveying title to the property was \$4,000.]~~

The tax ~~[should be computed on that amount.]~~ *is based on the total purchase price of \$240,000, the \$125,000 in cash and the \$115,000 value of the bonds.*

6. *Two corporations that do not have identical ownership exchange properties worth \$450,000 each. Each transfer is taxable on the \$450,000 value. Each corporation is receiving something of value in exchange for the property it is transferring.*

7. *To qualify for a loan to refinance their home, a married couple adds the husband's parents to the title, with the married couple and the husband's parents all as joint tenants. The value of the property is \$145,000. Because the transfer to the husband's parents from the wife*

is not exempt from the tax and the joint tenants each have a right to the whole property, the transfer is taxable on the \$145,000 value.

8. A couple buys a home from the Veteran's Administration for \$97,142.36. The transfer is taxable on the amount of purchase, \$97,142.36.

9. A university foundation receives property valued at \$1,000,000. The transfer is exempt from taxation pursuant to subsection 15 of NRS 375.090. The university foundation sells the property to another party in a transaction that is not exempt pursuant to NRS 375.090 for \$750,000. The second transfer is taxable on the amount of purchase, \$750,000.

10. A corporation owns property valued at \$180,000. To refinance the property, the corporation transfers the property to one of its shareholders pursuant to the requirements of the lender. The transfer is taxable on the value of the property, \$180,000.

11. "A" owns property worth \$50,000. "B" owns property worth \$75,000. "A" and "B" form a limited-liability company and are the only two members. "A" and "B" transfer their properties to the limited-liability company. Each transfer is taxable for the value of the properties, \$50,000 and \$75,000, respectively.

12. "A" and "B," who are not married and not related within the first degree of consanguinity, own two identical properties, each worth \$50,000, as joint tenants. "A" and "B" wish to transfer their interest in each property to the other so that "A" owns one property as the sole owner and "B" owns the other property as the sole owner. Because "A" and "B" are giving up their respective rights in the other parcel, the transfers are made with consideration and thus each transfer is taxable for the \$50,000 value. If "A" and "B" held title to each property in 50 percent fractional interests, each transfer would be taxable for \$25,000.

13. “A” and “B” are joint tenants of a 10-acre parcel that is worth \$150,000. “A” and “B” are not married and are not related within the first degree of consanguinity. They wish to partition the property with each receiving a 5-acre parcel in his own name. The transfer of each 5-acre parcel is taxable at a \$75,000 value. If they each owned a 50 percent fractional interest in the parcel, the transfer of each 5-acre parcel would be exempt from taxation, but if 6 acres were transferred to “A” and 4 acres were transferred to “B,” the transfer to “A” would be taxed on the value of 1 acre, \$15,000.

14. A partnership owns real property worth \$100,000. There is a mortgage on the property, and the partnership wishes to refinance the mortgage. As a condition of refinancing, the lender requires the property to be held in title by only one partner. The transfer from the partnership to the single partner is taxable on the entire \$100,000 value. Once the refinancing is complete, any transfer of title back to the partnership is also taxable on the entire \$100,000 value.

15. “A” and “B” own adjoining lots. “A” agrees to buy part of “B’s” lot for \$1,500,000. To expedite the mapping requirements, “B” transfers 100 percent of his lot to “A,” but retains a contractual obligation from “A” that after all mapping and adjustments to the legal description of the lot are complete, “A” will transfer back to “B” the property outside the purchased area. The first transfer is taxable on the \$1,500,000 amount. Because the second transfer is made without stated consideration, the transfer back to “B” of the excess area is taxable based on the fair market value of that area.

Sec. 15. NAC 375.160 is hereby amended to read as follows:

375.160 The following are examples of transfers or conveyances subject to the *real property transfer* tax:

1. A conveyance of realty in exchange for other property and the conveyance of the other property, if it is realty.
2. A conveyance of realty in consideration of life maintenance. The tax is computed on the net value of the realty conveyed.
3. Deeds given by persons such as masters in chancery, sheriffs and clerks of court for realty sold under foreclosure or execution. The tax is computed on the amount bid for the property plus the costs if paid by the purchaser, whether the purchaser is the mortgagee, judgment creditor or any other person.
4. A conveyance of realty by a judgment or decree in a condemnation proceeding under the power of eminent domain or a conveyance of property under threat of imminence of the proceeding.
5. Conveyances to or by building and loan associations except that the tax does not apply to a conveyance of realty to a building and loan association for the purpose of securing a loan thereon, nor to the reconveyance of the realty to its owner as part of the loan transaction.
6. A conveyance of realty to a corporation in exchange for shares of its capital stock.
7. A conveyance of realty by a corporation in liquidation or in dissolution to its shareholders subject to the debts of the corporation except that if there are no corporate debts and the conveyance is made solely for the cancellation and retirement of the capital stock, the tax does not apply.
8. Deeds to standing timber , ~~and to mines.~~ *patented mines and water rights.*
9. *A transfer by which a contract for deed is recorded that sets forth the purchase price, legal description, the buyer, the seller and which provides that the buyer has received custody*

of the real property and a deed will be delivered to the buyer when he fulfills his contractual obligations. If only a memorandum of such a contract is recorded, the transfer is also taxable.

Sec. 16. NAC 375.170 is hereby amended to read as follows:

375.170 In addition to the exemptions provided by NRS 375.090, the following are examples of transfers or conveyances which are not subject to the *real property transfer* tax:

1. The reconveyance of realty, conveyed to secure a debt, upon payment of the debt.
2. A deed to or by a trustee not pursuant to a sale.
3. A deed to confirm title already vested in the grantee, such as a quitclaim deed to correct a flaw in title.
4. A deed given by an executor in accordance with the terms of the will except that, if, by reason of a consideration passing between the 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 the greater share is subject to a tax computed upon the amount of the consideration.
5. A deed from an agent to his principal conveying real estate purchased for and with ~~[funds]~~ *money* of the principal. *A valid agency agreement must exist between the agency and his principal. No money may be supplied by the agent.*
6. An option *or contingent agreement* for the purchase of real property or a contract for the sale of real property, if the contract does not vest legal title ~~[.]~~ *until a future event occurs.*
7. Partition deeds, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying a greater share computed upon the consideration for the excess. *If, however, the parties hold title as joint tenants or tenants in common, the tax is applicable, unless another exemption applies.*

8. Ordinary leases of real property for any term of years. *If the lease is for life or in perpetuity, or if the lease is terminable at the option of the lessee only, the tax is applicable.*
9. A deed executed by a debtor conveying property to a trustee for the benefit of his creditors except that when the trustee conveys the property to a creditor or sells it to any other person, the conveyance executed by him is taxable.
10. Conveyance to a receiver of realty included in the receivership assets, and reconveyance of the realty upon the termination of the receivership.
11. A deed conveying real estate situated in a foreign country.
12. Transfer of real estate in a statutory merger consolidation from a constituent corporation to the continuing or new corporation.
13. *Distribution of interests in real property owned by a corporation as part of the liquidation of a corporation to the shareholders of the corporation in percentages equal to their ownership in the corporation. To receive title to his interest in the property, each shareholder must redeem his stock.*
14. *Transfer of title in real property to a trustee in a bankruptcy proceeding pursuant to a written plan of reorganization approved by the bankruptcy court.*
15. *Transfer of real property from "A" to "A's" trust, without consideration. "A" is trustor of the trust.*
16. *Transfer of real property from "A" to "A's" trust, without consideration. "B" is grantor on the deed and is the legal representative of "A," the trustor of the trust.*
17. *Real property is owned by "A" as trustee of the "A" Family Trust. "A" is also trustor of that trust. "A" transfers the real property to "C," "A's" son, without consideration.*

18. A purchase agreement that is recorded which sets forth the purchase price, legal description, buyer and seller of the property, but which also provides that the transaction is not complete until the seller obtains a zoning change and the buyer has not yet received a present interest in the property.

Sec. 17. NAC 375.180 is hereby amended to read as follows:

375.180 1. ~~[(H)]~~ *Except as otherwise provided in subsection 2, if* a deed evidencing a transfer of title of real property is offered for recording to a county recorder, ~~[by any person,]~~ the county recorder shall require a declaration of value to be made on a form prescribed by the Nevada tax commission, and *personally* signed under penalty of perjury by the ~~[person offering the deed for recording,]~~ *grantee, the grantor or the representative of the grantee or grantor. The form must contain, without limitation, information concerning the possible penalties and interest that may be imposed pursuant to NRS 375.030. The county recorder shall not accept an incomplete form except:*

(a) If the transfer of title of real property is exempt from the real property transfer tax, no value for the property need be declared on the form.

(b) If multiple parcels of real property are being transferred, only one parcel must be listed on the form, but the words “see attached” must be written next to the listed parcel number and an attachment that lists the number of each parcel being transferred must accompany the form.

2. If the value of the property is stated incorrectly on the declaration of value or the amount of tax is computed incorrectly, the person who pays an amount of tax which exceeds the amount due may make a claim for a refund of the amount of tax which he overpaid by completing ~~[Form 2,]~~ *a refund request form*, which may be obtained from the office of the ~~[Nevada tax~~

~~commission.]~~ *county recorder of the county in which the tax is paid.* The form must be signed under penalty of perjury by the person entitled to the refund or his *legal* representative and submitted to the county recorder of the county in which the tax is paid. *If the claim is unaudited, the claim must be submitted within 6 months after the date of recording pursuant to NRS 244.250. If the claim for a refund is submitted pursuant to an audit, the claim may be submitted within 3 years after the date of recording.*

Sec. 18. NAC 375.190 is hereby amended to read as follows:

375.190 ~~[1.]~~ The records and files of ~~[escrow holders]~~ *the grantor, grantee* and other persons recording deeds *regarding specific recorded documents* must be made available to representatives of the county recorder.

~~[2.— If a deed has gone through escrow or if an escrow holder has recorded the deed, the escrow holder is liable for payment of any additional tax required.~~

~~—3.— In every other case, the person whose signature appears on the declaration of value on Form 1* or the grantee is liable for payment of any additional tax required.~~

~~*See adopting agency for form.]~~ *If the county recorder determines that additional real property transfer tax is due, the grantee and the grantor are jointly and severally liable for the payment of the tax.*

Sec. 19. NAC 375.200 is hereby amended to read as follows:

375.200 1. If the property transferred is located in more than one county and the value has not been determined by the buyer and the seller as to each county, the value must be established by applying the ratio of the assessed valuation in each county to the total assessed valuation of all the property.

2. A person seeking a refund of the real property transfer tax for property located in more than one county must submit a request for refund ~~{on Form 2*}~~ to the county recorder in each county in which the property is located ~~{.}~~ *on the form prescribed by the county recorder in each county.*

3. Refunds must be made pursuant to the same distribution formula under which the tax was initially paid.

~~{*See adopting agency for form.}~~