

**PROPOSED REGULATION OF THE
DEPARTMENT OF TAXATION**

LCB File No. R224-03

January 23, 2003

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

AUTHORITY: §§1-9 and 11, NRS 375.015; §10, NRS 375.015 and 375.330.

Section 1. Chapter 375 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. *Each county recorder shall submit to the Department a copy of any written opinion received from the district attorney of his county regarding the imposition or collection of any tax imposed by chapter 375 of NRS.*

2. If the Department determines that an opinion of a district attorney received pursuant to subsection 1 is inconsistent with an opinion of the Attorney General or any statutory or regulatory requirements regarding the imposition or collection of any tax imposed by chapter 375 of NRS, the Department will advise the county recorder from whom the opinion is received about the inconsistency of the opinion or refer the opinion to the Attorney General for additional consideration, or both.

Sec. 3. *The Department may examine the records of each county recorder to determine whether the county recorder is complying with statutory and regulatory requirements governing the calculation, collection and distribution of the tax imposed by NRS 375.023. In conducting such examinations, the Department will:*

1. Review a sample of the deeds presented to the county recorder for recordation to verify that the amount of tax collected was proper and whether the basis of the tax was reported correctly and exemptions were properly allowed.

2. Verify that the collection allowance authorized to be deducted and withheld from the taxes collected is properly calculated.

3. Verify that required reports are submitted in a timely manner.

4. Verify that all amounts collected are transmitted to the proper authority in a timely manner.

5. Verify that proper procedures are being followed for recording certificates of delinquency, releasing liens and administering requests for the correction of assessments.

Sec. 4. *1. The Department will periodically prepare reports regarding the collection and administration of taxes imposed by chapter 375 of NRS.*

2. Except as otherwise provided in this section, each county recorder shall submit to the Department monthly reports regarding the collection and administration of taxes imposed by chapter 375 of NRS in his county. The reports must include:

(a) The total number of deeds evidencing a transfer of title to real property that were subject to the taxes imposed by chapter 375 of NRS for the immediately preceding month;

(b) The total amount of taxes collected for the immediately preceding month;

(c) The total number of exemptions granted for the immediately preceding month listed by the types of exemptions granted; and

(d) Such other information as may be useful in coordinating the collection and administration of the taxes imposed by chapter 375 of NRS.

3. A county recorder is not required to report information required by subsection 2 if the system used by the county to collect, process, distribute and store information relating to the collection of the taxes imposed by chapter 375 of NRS cannot provide the required information.

Sec. 5. 1. *The county recorder of a county whose population is less than 30,000 may request assistance from the Department in making determinations regarding the amount of any tax required to be collected pursuant to chapter 375 of NRS and whether a transfer or conveyance of real property is exempt from taxation.*

2. The Department will respond to a request received pursuant to subsection 1 within 2 business days after receiving the request and any supporting documents that are necessary to render such assistance.

Sec. 6. *A county recorder may, at the time any tax imposed by NRS 375.023 is collected, remit the collection allowance he is authorized to deduct and withhold by subsection 4 of that section to the credit of the general fund of the county.*

Sec. 7. 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 375.015 to 375.140, inclusive, have the meanings ascribed to them in those sections.]~~ *“Department” means the Department of Taxation.*

Sec. 8. NAC 375.180 is hereby amended to read as follows:

375.180 1. Except as otherwise provided in subsection ~~[2,]~~ 3, if a deed evidencing a transfer of title of real property is offered for recording to a county recorder, 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 grantee, the grantor or the ~~representative~~ agent of the grantee or grantor. The ~~form must~~ *declaration of value:*

(a) *Must* contain, without limitation ~~information~~ :

(1) *The name and mailing address of the grantor, the grantee and the business or natural person requesting the recording if the grantor or grantee does not request the recording;*

(2) *A description of the use of the property;*

(3) *The full amount paid or to be paid for the property; and*

(4) *Information* concerning the possible penalties and interest that may be imposed pursuant to NRS 375.030.

(b) *May contain information regarding a claim for an exemption from the tax, including, without limitation:*

(1) *The type of exemption claimed;*

(2) *A statement explaining the reason for the claim;*

(3) *A statement indicating whether or not the exemption is being applied to a partial interest in the property; and*

(4) *The sales price of the property, if that information is available.*

2. 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.}~~ 3. 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 a refund request form, which may be obtained from the office of the 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. 9. NAC 375.190 is hereby amended to read as follows:

375.190 The records and files of the grantor, grantee and other persons recording deeds regarding specific recorded documents must be made available to representatives of the county recorder ~~{}~~ *and to representatives of the Department.* If the county recorder *or the Department* 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. 10. 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}~~ *any* tax *imposed by chapter 375 of NRS* for property located in more than one county must submit a request for refund 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.

Sec. 11. NAC 375.340 is hereby amended to read as follows:

375.340 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⌋~~ *because* of circumstances beyond the control of the taxpayer who was required to make the payment *or his agent* 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 ~~⌋~~:

(a) *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⌋~~ *If the notice is given by mail, the period for filing the application must be extended by 3 days.*

(b) *Be made upon:*

(1) *An oath before a notary public; or*

(2) *A declaration that is made subject to the penalty of perjury.*

(c) *Contain* 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 ~~[]~~ *or his agent and occurred despite the exercise of ordinary care and without intent*, 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 ~~[]~~ *or his agent*, including, without limitation, fire, earthquake, flood or other acts of ~~[God,]~~ *nature*, theft, the death or illness of the taxpayer, *his agent* or a member of the immediate family of the taxpayer, ~~[an error or the misconduct of an employee of the taxpayer,]~~ erroneous *written* information provided to the taxpayer *or his agent* by the recorder's office and the misaddressed but timely mailing of the *return or* 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.] pursuant to NRS 375.110, unless the county recorder determines that there is insufficient evidence to show fraud or intent to evade the tax.~~

5. If the county recorder denies an application for a waiver or reduction of the penalty or interest for a delinquent payment and a notice of appeal is filed with him in a timely manner pursuant to NRS 375.320, the county recorder shall set a date for a hearing before a hearing officer and notify the parties of the date, place and time of the hearing at least 21 working days before the date of the hearing. The hearing must be conducted in compliance with the provisions of NAC 375.300 to 375.330, inclusive.

Sec. 12. NAC 375.015, 375.020, 375.030, 375.040, 375.050, 375.060, 375.063, 375.067, 375.070, 375.080, 375.085, 375.090, 375.100, 375.110, 375.120, 375.128, 375.130, 375.140, 375.150, 375.160 and 375.170 are hereby repealed.

TEXT OF REPEALED SECTIONS

375.015 “Agency agreement” defined. (NRS 360.090, 375.015) “Agency agreement” means a written agreement pursuant to which a legal representative may act on behalf of another person.

375.020 “Assigned,” “granted,” “transferred,” “otherwise conveyed” defined. (NRS 360.090, 375.015) “Assigned,” “granted,” “transferred” and “otherwise conveyed” are synonymous words all meaning the transfer of title to realty from one person to another.

375.030 “Consideration” defined. (NRS 360.090, 375.015) “Consideration” means that which is regarded as the equivalent or return given or suffered by one for the act or promise of another. It means the price paid for the real property transferred. The consideration can be in the form of money, or in the form of other things of value, or a combination of both.

375.040 “Deed of trust,” “trust deed” defined. (NRS 360.090, 375.015) “Deed of trust” or “trust deed” means an instrument taking the place and serving the uses of a common-law mortgage, by which legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions.

375.050 “Deed with the right of redemption” defined. (NRS 360.090, 375.015) “Deed with the right of redemption” means a deed which provides for the annulling and revoking of a conditional sale of property for the failure to perform the conditions stipulated.

375.060 “Easement” defined. (NRS 360.090, 375.015) “Easement” means a permanent interest in another’s land, with a right to enjoy it fully and without obstruction. The term includes the right of ingress and egress to a person’s property.

375.063 “Fractional interest” defined. (NRS 360.090, 375.015) “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.

375.067 “Joint tenancy” and “joint tenants” defined. (NRS 360.090, 375.015) “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.

375.070 “Land” defined. “Land” means not only the soil, but everything attached to it, whether attached by the course of nature, as trees, herbage and water or by the hand of man, as buildings and fences.

375.080 “Lease” defined. (NRS 360.090, 375.015) “Lease” means a conveyance of lands or tenements to a person for life, for a term of years, or at will, in consideration of rent or some other compensation. The person who so conveys such lands or tenements is termed the lessor and the person to whom they are conveyed, the lessee.

375.085 “Legal representative” defined. (NRS 360.090, 375.015) “Legal representative” has the meaning ascribed to it in NRS 167.020.

375.090 “Life estate” defined. (NRS 360.090, 375.015) “Life estate” means an estate whose duration is limited to the life of the party holding it or of some other person.

375.100 “Quitclaim deed” defined. (NRS 360.090, 375.015) “Quitclaim deed” means a deed of conveyance operating by way of release; that is, intended to pass any title, interest or

claim which the grantor may have in the premises, but not professing that the title is valid, nor containing any warranty or covenants for title.

375.110 “Realty” defined. (NRS 360.090, 375.015) “Realty” means real property, anything which partakes of the nature of real property. The term includes land and tenements.

375.120 “Right of redemption” defined. (NRS 360.090, 375.015) “Right of redemption” means the right to disencumber property or to free it from a claim or lien; specifically, the right, granted by statute only, to free property from the encumbrance of a foreclosure or other judicial sale or to recover the title passing thereby, by paying what is due, with interest and other costs.

375.128 “Tenancy in common” and “tenants in common” defined. (NRS 360.090, 375.015) “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.

375.130 “Tenement” defined. (NRS 360.090, 375.015) “Tenement” means land, houses and other buildings and means rents, commons and several other rights and interests issuing out of or concerning land.

375.140 “Transferred” defined. (NRS 360.090, 375.015) “Transferred” means:

1. The passing of a thing or of property from one person to another or to convey.
2. An act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

375.150 Examples of methods of determining value or tax base. (NRS 360.090, 375.015, 375.020, 375.090) 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, 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 \$144,000. “B” paid the amount of \$25,000 in cash, leaving a balance of \$119,000 and “A” gave “B” a deed to the property. The tax is computed on \$144,000, the amount paid or to be paid.
3. The holder of a trust deed in the amount of \$120,000 foreclosed upon the property securing the deed. At the foreclosure sale, because of taxes and additional expenses incurred, the trustee bid \$122,500, and a trustee’s deed was issued to the beneficiary. The beneficiary then accepted a mortgage in the amount of \$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, in this example \$122,500. The deed from the 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 \$125,000.
4. For a full purchase price of \$500,000, “A” conveys to “B” land on which there is an encumbrance of \$410,000 at the 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 tax on 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 \$240,000. “B” paid the amount of \$125,000 in cash, leaving a balance due of \$115,000. “A” accepted bonds of the Home Owners’ Loan Corporation for the balance of \$115,000 and gave “B” a deed to the property. The tax 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.

375.160 Examples of taxable transactions. (NRS 360.090, 375.015, 375.020) 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, patented mines and water rights.

9. A transfer by which a contract for deed is recorded which sets forth the purchase price, legal description, the buyer and 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.

375.170 Examples of transactions to which real property transfer tax does not apply.
(NRS 360.090, 375.015, 375.020, 375.090) 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 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.