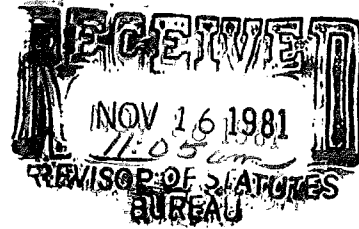


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CERTIFICATE OF RULE ADOPTION

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

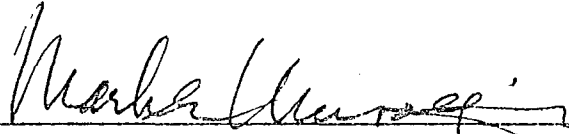


TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Mark E. Musolf, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed rules relating to the real estate transfer fees were duly approved and adopted by this department on November 16, 1981.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY, WHEREOF, I have hereunto set my hand at 125 South Webster Street in the City of Madison, this 16th day of November, 1981.



Mark E. Musolf
Secretary of Revenue

1-1-82



ORDER OF THE DEPARTMENT OF REVENUE
ADOPTING RULES

The department of revenue is creating Chapter Tax 15 of the Wisconsin Administrative Code to define; conveyances, value subject to fee, exempt and nonexempt conveyances, and land contract interest relating to real property transfers as recorded by the register of deeds in each county of the state.

Analysis Prepared by Department of Revenue

The need for adopting the above mentioned rules is to aid the various county register of deeds in administering the real estate transfer fee law. Because of the great number of ownership interests in real estate and the greater utilization of the methods used to transfer these interests, the department of revenue has chosen to delineate the taxable and non-taxable aspects of these many transactions. The general property tax law depends greatly upon the proper reporting of fair market value. The proper completion of the real estate transfer fee return is important to equitably distribute the property tax burden across property classes and among individual property owners. This rule codifies the department's long-standing interpretation of subchapter II, Chapter 77, Wisconsin Statutes.

Tax 15.01 interprets s. 77.21(1), Stats., to exclude contracts which will be executed at some future time from the definition of "conveyance." Tax 15.02 interprets s. 77.21(1), Stats., by stating that a transfer of property from one partner to another and an exchange of properties are each separate "conveyances," and should be valued separately for purposes of s. 77.21(3)(b), Stats. Tax 15.03 and 15.05 interpret s. 77.25, Stats., by delineating what specific "conveyances" are exempt or not exempt. For example, Tax 15.03(2)(a), (b) and (c) and 15.05(5) deal with the application of the law to conveyances by means of a sheriff's sale. Tax 15.03(2)(a), (b) and (c) reflect situations which are not contemplated in s. 77.25(10), Stats. The only sheriff's sale conveyance executed solely to release a debt is described at Tax 15.05(5). Tax 15.04 interprets s. 77.22(2), Stats., by stating which interests in a land contract are exempt or not exempt from the fee.

Explanation of Modifications:

Chapter 20, Laws of 1981 repealed s. 77.26, Stats., and changed the real estate transfer fee rate from \$.10 to \$.30 for each \$100 of value. The rule was modified to remove any reference to obsolete statutory language. The Register of Deeds Association also suggested that wherever the word "file" is used it should be substituted with the word "record". This recommendation has been incorporated in the final draft by using the term "submit" which is technically more explicit.

The other changes to the rule proposed at the public hearing were not incorporated for the following reasons:

1. Comments were beyond the scope of the rule making process.
2. Comments required a change in the law.
3. Comments were directed towards questions on the return form itself which was not a subject of the rule.
4. Comments related to a statute other than the real estate transfer fee law.

An explanation of the department's response to the hearing comments is attached and may be found in the last two pages of the transcript.

Persons Appearing at Public Hearing:

Werner Doering, Director of the Bureau of Utility & Special Taxes, Madison, WI
Richard Schliewe, Assessor of Kenosha County, Kenosha, WI
Walter D. Braun, President of the Wisconsin Register of Deeds Association,
Wisconsin Rapids, WI
Mark Steuerwald, Property Assessment Specialist, Department of Revenue,
Madison, WI
Carol Mahnke, Register of Deeds, Dane County, Madison, WI
Vernon Meyer, Deputy Assessor, City of Janesville, WI

Response to Legislative Council Staff Recommendations:

The suggested changes by the Rules Clearinghouse dealing with form, style and placement have been incorporated in the revised rules. Reference to the phrase "real estate transfer fee law" has been substituted with the statutory citations wherever applicable.

The proposed ss. Tax 15.03(2)(b) and (c) and 15.05(5) deal with the application of the real estate transfer fee to conveyances by means of a sheriff's sale. The Rules Clearinghouse report suggested the proposed rules lacked an adequate explanation and differentiation of when conveyances were exempt or subject to s. 77.22(1), Stats. Language has been added to the analysis section of the rule which describes that s. Tax 15.03(2)(a), (b) and (c) reflect situations which are not contemplated in s. 77.25(10), Stats. It further specifies that a sheriff's sale conveyance executed solely to release debt is addressed under Tax 15.05(5).

Tax 15.03(3) has been modified to indicate that conveyances between natural brother and sister, stepchildren as well as stepparent and stepchild are not exempt and are taxable under s. 77.22, Stats.

Language has also been added under s. Tax 15.05(4) which specifically states that no fee is required in conveyances involving a divorce decree but a return must still be filed showing the value of property transferred.

Statement of Statutory Authority:

Pursuant to authority vested in the department of revenue by s. 77.30, Stats., the department hereby adopts rules interpreting sections 77.21, 77.22, 77.25, Stats., as follows:

TAX 15.01 DEFINITION OF A CONVEYANCE (s. 77.21, Stats.)

Option contracts or agreements that provide for the right of first refusal of purchasing an interest in real estate are not conveyances within the scope of s. 77.21(1), Stats.

TAX 15.02 VALUE SUBJECT TO REAL ESTATE TRANSFER FEE (s. 77.21, Stats.)

- (1) The conveyance of a parcel of real property by a partner to a partnership is subject to both real estate transfer fee and return. The measure of value subject to the fee is the value of the ownership of the property actually relinquished.

- (2) In an exchange of real properties, two separate and distinct conveyances are involved and the value should be separately determined for each.

NOTE: Explanatory example of Tax 15.02(1): If a partner owns a one-third interest in the partnership, the fee is based upon two-thirds of the consideration paid by the partnership for the real property, or in the case of a gift, nominal consideration or an exchange, two-thirds of the market value of the property.

NOTE: Explanatory example of Tax 15.02(2): If (i) 'A' conveys a parcel X of real property worth \$50,000 to 'B,' and (ii) 'B' in turn conveys a parcel Y of real property worth \$45,000 plus cash of \$5,000 to 'A,' both conveyances are taxable under s. 77.22(1), Stats., and a return is required to be submitted for each conveyance. The basis of the real estate transfer fee for conveyance (i) is \$50,000 and for conveyance (ii) is \$45,000. Therefore, the real estate transfer fee for conveyance (i) is \$150 and that for conveyance (ii) is \$135.

TAX 15.03 IMPOSITION OF REAL ESTATE TRANSFER FEE (s. 77.22(1), Stats.)

A real estate transfer fee is imposed on the grantor of real estate on every conveyance not exempted under s. 77.25, Stats. Real estate conveyances which are taxable under s. 77.22, Stats., include:

(1) Corporation conveyances:

- (a) From a corporation to a partnership, and from a partnership to a corporation.
- (b) From an individual to a corporation, and from a corporation to an individual.
- (c) From a corporation to its stockholders pursuant to a plan of liquidation.
- (d) From one corporation to another, both of which have the same parent corporation, that is, conveyances between "sister" corporations.
- (e) From a corporation to another caused by a "spin-off." A spin-off occurs when, after a part of the assets of corporation 'A' is transferred to corporation 'B' controlled by the transferrer 'A,' stock or securities in the latter 'B' are distributed to the shareholders of the controlling corporation 'A,' without a surrender by corporation 'B's' shareholders of any of their stock or securities.
- (f) From a corporation to another caused by a "split-up." In a split-up the distributing corporation 'A' transfers its assets to two or more newly created corporations in exchange for their stock and effects a complete liquidation, 'A's' shareholders receiving stock in the new corporations in exchange for the distributing corporation's stock.
- (g) From one corporation to another pursuant to any bankruptcy provision.
- (h) From a parent corporation to a subsidiary corporation in exchange for stock.

- (2) Conveyances by means of a sheriff's sale:
 - (a) Where the grantee is a third party with no prior interest in the deed or mortgage.
 - (b) Where the mortgagee (lender) purchases the property for less than the amount of the lien and demands a deficiency judgment in addition to the sale proceeds.
 - (c) Where the mortgagee (lender) purchases the property for more than the amount of the lien.
- (3) Conveyances of real property between stepchildren, natural children or step-parent and stepchild.
- (4) Conveyances by dissolution of a partnership.
- (5) Conveyances between an individual and a tax-exempt organization.
- (6) Conveyances of timber or mineral rights.
- (7) Court ordered conveyances by a county to satisfy an old age assistance lien.
- (8) Conveyances of a remainder interest in real property.
- (9) Conveyances of real property from a trustor to a trustee.
- (10) Bankruptcy court ordered conveyances.

TAX 15.04 LAND CONTRACTS (s. 77.22(2), Stats.)

- (1) Original land contract. Any original contract or any instrument evidencing the existence of a land contract, either of which indicates that such original land contract was made on October 1, 1969 or thereafter, requires the submission of a return as a condition to recording by the register of deeds. However, no fee is imposed at time of such recording.
- (2) Deeds in fulfillment of a land contract.
 - (a) Any deed or other instrument executed in fulfillment of a land contract, which land contract is dated December 17, 1971, or thereafter, requires the submission of a return and payment of the fee provided by s. 77.22(2)(b), Stats., as a condition to recording. The return must show that the deed is given in satisfaction of a land contract and the fee is based on the purchase price established by the terms of land contract.
 - (b) Deeds in fulfillment of recorded land contracts dated prior to December 17, 1971 are not subject to the fee. As a result of the changes made by Chapter 150, Laws of 1971, deeds presented allegedly in fulfillment of an unrecorded land contract dated prior to December 17, 1971 should not be recorded as exempt until the land contract or evidence of the existence of a land contract is recorded. This is necessary to establish that the land contract was in fact dated prior to December 17, 1971.

- (3) Sale of a land contract vendee's interest. A sale or assignment of a vendee's interest which is dated October 1, 1969, or thereafter is subject to both the fee and return as a condition to recording.
- (4) Sale of a land contract vendor's interest. A deed which transfers the interest of a vendor in a land contract to another person is excluded from the provisions of s. 77.22(2), Stats. It is therefore not subject to the transfer fee. Under the doctrine of equitable conversion the vendor's interest in the land contract becomes personal property. Such a transfer is not a conveyance within the definition of s. 77.21(1), Stats., because it does not provide for the passage of ownership interest in real estate.
- (5) Recording of a deed issued in partial satisfaction of an original land contract. The basis of the real estate transfer fee shall be prorated in proportion to the area covered by the deed.

NOTE: Explanatory example of Tax 15.04(5): If a land parcel of 40 acres was sold under an original land contract for \$80,000, and subsequently a deed was issued in partial satisfaction of this land contract for \$4,500, and the area covered by the deed issued in partial fulfillment of the land contract was 5 acres, the real estate transfer fee is based upon $5/40$ of \$80,000 or \$10,000.

TAX 15.05 EXEMPTION FROM FEE (s. 77.25, Stats.)

Conveyance of real property pursuant to any of the exemptions listed in s. 77.25, Stats., are not subject to the payment of real estate transfer fee except that returns are required at the time of recording.

- (1) Conveyances from the United States, its agencies or instrumentalities are not subject to the fee imposed under s. 77.22(1), Stats.
- (2) Conveyances from the state, its instrumentalities, agencies and subdivisions are not subject to the fee imposed under s. 77.22(1), Stats.
- (3) A certificate of termination issued by the county court upon petition by interested persons in the realty upon the death of a person holding a life estate in real property or upon the death of a person who is a joint tenant in real property would be a conveyance as defined in s. 77.21(1), Stats., since it transfers an interest in real estate. This conveyance is exempt from the real estate transfer fee by virtue of s. 77.25(11), Stats., as a conveyance by descent or survivorship.
- (4) Conveyances between husband and wife pursuant to a divorce decree are not subject to the fee but a return must be submitted. The value of property transferred shall be stated on the real estate transfer return.
- (5) Conveyance by means of a sheriff's sale when the mortgagee (lender) bids the amount of the lien to obtain the property is not subject to the fee imposed under s. 77.22(1), Stats.

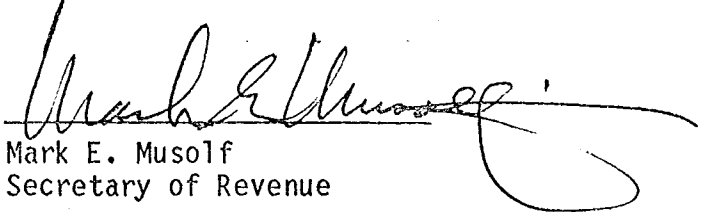
(6) Conveyances of cemetery lots, as distinct from land conveyed for use as a cemetery, are not subject to s. 77.22(1), Stats.

The rule contained in this order shall take effect on the first day of the month following its publication pursuant to s. 227.026, Wis. Stats.

Dated: November 16, 1981

DEPARTMENT OF REVENUE

By:


Mark E. Musolf
Secretary of Revenue

NOTE
TAX RULE 15.04(4)

See "Mueller v. Novelty Dye Works (1956), 273 Wis. 501, 78 N.W. 2d 881."

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Real Estate Transfer Fee - Subchapter II, Chapter 77, Wis. Stats.

Fiscal Effect

State:

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues
- Increase Costs - May Be Possible to Absorb Within Agency's Budget Yes No
- Decrease Costs
- No State Fiscal Effect

Local:

- | | | |
|---|---|---|
| <p>1. <input type="checkbox"/> Increase Costs
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues
 <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Units Affected:</p> <p><input checked="" type="checkbox"/> Towns <input checked="" type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities</p> <p><input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others _____</p> |
|---|---|---|

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Tax Rule 15.01 through 15.05 codifies legal opinions which have been issued by the department of revenue during the past several years. There is no state or local fiscal effect associated with the implementation of these rules.

Long-Range Fiscal Implications

Agency

REVENUE

Authorized Signature/Telephone No.

Walter Hinnrich

Date

12-23-80

