



Transfer Taxes - Exemptions and Triggers

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Last month's article dealt with the various types of transfer taxes. Despite the necessity of paying these taxes upon the submission of the deed for recording, there are special situations wherein the transferor/transferee of the property is exempt from the payment of this tax. Special exemptions apply to the following transfers:

Transfers from governmental agencies such as the United Nations, the State of New York, its agencies, instrumentalities, including public corporations, including those created pursuant to agreement of compact with another state or Canada or political subdivisions. This also includes the United States of America, its agencies and instrumentalities. It should be noted that exemption from governmental bodies does not relieve the grantee from the liability of the transfer tax or the filing of a return. This scenario applies to both New York City and New York State transfer tax.

Transfers or transactions by or to any corporation, trust, fund or foundation organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual is exempt from the transfer tax. This is not the case where a substantial part of the activities is to carry on propaganda, or to otherwise attempt or influence legislation, or in the case where the primary purpose of the organization is to carry on a trade or business for profit, whether or not all of its profits are payable to one or more organizations as described above.

A deed or instrument given solely as security for a debt, or a deed given solely for the purpose of returning such security is considered tax exempt from New York City and State transfer tax.

For both New York City and State purposes, transfers that involve mere changes in identity or form of ownership or organization, to the extent that there is no change in the beneficial interest or economic interest in the subject property, is exempt from the transfer tax. This includes transfers to a corporation where the owners of the property prior to the transfer are the shareholders, also transfers from a fee owner into a trust or distribution of property by a trust to a trust beneficiary.

Deeds, which are being given to confirm, correct or modify or supplement a prior conveyance, are also exempt from both New York City and State transfer taxes.

Contracts of Sale to sell real property that are submitted for recording are exempt from transfer tax so long as the Contract does not grant the use or occupancy of such property, or grant an option to purchase the real property without the use or occupancy of such property.

Deeds or instruments or transactions from a mere agent, dummy, strawman or conduit to a principal, or a deed from the principal to an agent, dummy, strawman or conduit is also exempt from transfer tax for New York City and State purposes.

Conveyances given in connection with a tax sale or the Bankruptcy Act, and Deeds in Partition are also exempt from both New York City and State transfer taxes.

It should be noted that whether a transfer tax is due or exempt, the appropriate transfer tax forms applicable to the county or city where the property is located must be filed. In addition, although the transfer may be construed as exempt from transfer tax, there is always the possibility of an audit on the City and/or State level to prove the validity of the exemption with supporting documentation. This is more prevalent in the case of a transfer for no consideration or in a gift transfer.

One common misconception regarding the applicability of transfer taxes concerns transactions where actual money, in the traditional sense, is not changing hands. The most common fact pattern in this area is undoubtedly the transfer or conveyance of an interest in real property from one spouse to another pursuant to a divorce decree or separation agreement. Typically the grantee in such transactions does not hand over funds to the grantor in return for the conveyance and therefore lay individuals often erroneously conclude that they are engaging in a transfer for no consideration and a transfer tax-exempt transaction. Upon closer inspection, however, it becomes clear that the individual conveying his or her interest is not doing so as a gift to the soon to be ex-spouse. The grantor is receiving other benefits as compensation for the relinquishing of his or her property interest and therefore there is consideration subject to transfer tax.

Once we conclude that the just outlined transfer is subject to the transfer tax a second dilemma arises: How do we calculate the amount of consideration when there is no contract "price"? The answer lies in a presumption that the consideration is the fair market value of the interest being relinquished.

There are transfers of interests that are subject to transfer taxes even when no deed, or any other document, is being recorded to evidence the transfer. Indeed the interest being transferred may not even be directly a real property interest. Such is the result in cases of Transfers of Controlling Economic Interests in entities such as corporations that own real property. In the case of a corporation, for example, the transfer of 50% or more of the total stock of said entity would trigger the requirement that transfer tax be paid. It is easy to see how simple it would be to avoid transfer taxes altogether, particularly in the commercial real estate area, if such transfers were not taxed.