



INFORMATIONAL BULLETIN

■ Chicago Real Property Transfer Tax

Purpose:

The purpose of this informational bulletin is to discuss the Department of Revenue's position on certain issues, which relate to the Chicago Real Property Transfer Tax (the "Tax"), chapter 3-33 of the Municipal Code of Chicago (the "Code"), by explaining four of the most commonly claimed exemptions, which are contained in section 3-33-060 of the Code, and listed on page 2, Section 3 of the Real Property Transfer Tax Declaration Form (the "Form"); and by clarifying some additional issues, which relate to the Tax.

General Information:

The Tax is imposed on the privilege of transferring title to, or beneficial interest in, real property located in the City of Chicago. See section 3-33-030 of the Code. The tax rate is \$3.75 per \$500.00 of the transfer price, or fraction thereof, of the real property, or beneficial interest in the property. *Id.*

Governmental or Charitable Organization Exemption - Subsection 3-33-060(B) of the Code; Section 3, Paragraph B of the Form:

Transfers involving real property (1) acquired by or from a governmental body; (2) acquired by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes; or (3) acquired by any international organization not subject to local taxes under applicable law are exempt.

The Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") do not qualify as governmental bodies.

Transfers for less than \$500 - Subsection 3-33-060(E) of the Municipal Code; Section 3, Paragraph E of the Form:

Transfers in which the transfer price is less than \$500 are exempt. The "transfer price" means the consideration furnished for the transfer of title to, or beneficial interest in, real property, valued in money, whether paid in money or otherwise, including cash, credits and property, determined without any deduction for mortgages, liens or encumbrances, and specifically including the amount of any indebtedness or obligation canceled or discharged in connection with the transfer. See subsection 3-33-020(H).

Typical types of transfers that fall into this category are (1) transfers between a trust and its beneficiaries and (2) transfers of gifts. With respect to transfers between trusts and their beneficiaries, only the following types of transfers are exempt from the tax: (a) transfers from the sole beneficiaries to the trust, where the trust agreement provides that the beneficial ownership of the beneficiaries is the same as it was before the transfer into trust, and (b) transfers from the trust to the sole beneficiaries of the trust, where the distribution agreement provides that the ownership of the beneficiaries is the

same as it was before the transfer out of the trust.

With respect to transfers which result from divorce or separation proceedings, it is presumed that the consideration given for the transfer of real property between spouses is equal to the fair market value of the interest conveyed, and is subject to the Tax. For example, if one spouse is ordered or agrees to transfer to the other spouse his or her interest in real property, which is owned jointly with the other spouse, the spouse who receives the transferring spouse's interest is subject to taxation; and the amount of the transfer price will be presumed to be one-half of the fair market value of the real property. See Chicago Department of Revenue Real Property Transfer Tax Ruling #3, October 3, 2005.

Transfers of property in exchange for an interest in a corporation, limited liability corporation, or other legal entity are taxable events, unless the transferor is the sole owner of the legal entity to which the property is being transferred. The transfer price is the fair market value of the real property. For example, if an individual or legal entity transferred its real property to a partnership and received only a one-half interest in the partnership, a Transfer Tax would be due on one-half of the fair market value of the real property.

Enterprise Zone Exemption - Subsection 3-33-060(L) of the Code; Section 3, Paragraph L of the Form:

Transfers of title to, or beneficial

interest in, real property used primarily for commercial or industrial purposes located in an enterprise zone, as defined in chapter 16-12 of the Code, are exempt. Transfers where the property is intended to be converted into residential use and such use consumes 50% or more of the property do not qualify for the exemption. See Chicago Department of Revenue Real Property Transfer Tax Ruling #2, May 13, 2004.

Transfers to Secured Creditors - Subsection 3-33-060(M) of the Code; Section 3, Paragraph M of the Form:

Transfers in which the deed or other instrument of transfer is issued to the mortgagee or secured creditor pursuant to a mortgage or security interest foreclosure proceeding or sale or pursuant to a transfer in lieu of foreclosure are exempt. When a creditor holds a secured interest in property (e.g., a bank or savings and loan through a mortgage) and acquires the property either (a) at a foreclosure sale for an amount, which is equal to or less than the outstanding debt that is secured by the property, or (b) through a deed from the debtor in lieu of the foreclosure action, the transfer is exempt from the Tax. A second mortgagee that acquires property through a foreclosure and assumes the debt of the primary secured lender is taxable on the amount of the outstanding debt owed to the primary lender.

For example, if a primary lender has an outstanding debt of \$200,000 secured with real property, and a second lender has an outstanding debt of \$100,000 secured with the same property; and if the second lender took a deed for the property from the debtor, in lieu of foreclosing on the property, then the second lender would incur a tax on the amount of the outstanding debt, which it assumed (i.e., \$200,000).

Other information:

Where the transfer price reported on a declaration is different than the purchase price of the property, the difference must be fully explained, with full documentation attached to the Form.

The Transfer Tax is due upon the earlier of the delivery or recording of the deed, assignment or other instrument of transfer (see section 3-33-030) and is payable through the purchase of stamps (see section 3-33-040). Title companies are responsible for making sure that stamps are purchased, cancelled, and affixed to the deed or other instrument of transfer, when they receive the proceeds for the stamps at the closing. See section 3-33-040. Failure to purchase and affix the stamps will subject title companies to interest and penalties that accrue on the unpaid tax.

A program is being offered by the City during the period beginning October 24, 2005, and ending December 16, 2005, to provide amnesty from interest and penalties on Transfer Tax liabilities incurred prior to July 1, 2005. Amnesty is not available with respect to any tax identified in any written notice of tax audit or tax investigation that the Department has sent to a taxpayer or other debtor.

Persons interested in participating in the city's amnesty program must apply by filling out the application available at www.cityofchicago.org. Amnesty applications for this program are to be submitted to the Real Property Enforcement Section of the Department of Revenue in Room LL30 of the DePaul Center, 333 S. State Street, Chicago, Il. 60604-3977. A person's failure to properly apply for amnesty

continues to subject such person to penalties and interest on unpaid Transfer Taxes, and may also subject the person to an additional amnesty penalty.

Questions?

If you have questions or need more information, please write us. Our address is:

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