

Realty Transfer Fee, Mansion Tax, and Controlling Interest Tax

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Realty Transfer Fee (“RTF”)

Overview

- New Jersey RTF due on the sale of any property
- Collected when the deed is recorded in the State of New Jersey
- Seller obligation
- Due on all deeds for consideration of over \$100 unless an exception arises
 - “Consideration” = “anything of value” (specifically includes a mortgage assumed by the buyer)
- Fee rates are graduated (see next slide)

RTF Rates

- If total consideration not in excess of \$350,000:
 - 0.4% up to \$150,000
 - 0.67% in excess of \$150,000 up to \$200,000
 - 0.78% in excess of \$200,000 up to \$350,000
- If total consideration is in excess of \$350,000:
 - 0.58% up to \$150,000
 - 0.85% in excess of \$150,000 up to \$200,000
 - 0.96% in excess of \$200,000 up to \$550,000
 - 1.06% in excess of \$550,000 up to \$850,000
 - 1.16% in excess of \$850,000 up to \$1MM
 - 1.21% in excess of \$1MM
- At consideration of \$1.2MM, overall rate is approximately 1%

Examples

- \$100,000 of consideration: \$400 RTF
- \$1,000,000 of consideration: \$9,575 RTF
- Sale of property for \$10 with mortgage of \$500,000 to be assumed by buyer, no exception: \$500,000 mortgage is the consideration so \$4,175 RTF

Exceptions

- Important Exceptions
 - Transfers without consideration
 - Note: A mortgage on property = consideration.
 - Transfers between Husband and Wife or between Parent and Child (even if there is consideration)
 - Executor deeds
 - Confirmatory/Corrective deeds (e.g., deed to confirm a merger)
- Other exceptions (see next slide)

*The exceptions are historically provided in N.J.A.C. 18:16-5.1 through 18:16-5.12. However, pursuant to Westlaw, “[i]n accordance with N.J.S.A. 52:14B-5.1b, Chapter 16, Realty Transfer Fee, expired on September 5, 2013.” Still, the State of New Jersey website continues to refer to these regulations in its Q&A section: <https://www.state.nj.us/treasury/taxation/lpt/rtffaq.shtml>

Other Miscellaneous Exceptions

- Governmental Grantor/Grantees
- Deeds of Trust, etc. (provide/release security)
- Tax sale certificates
- On partition
- Bankruptcy/Receiver
- Eligible to be recorded as an “ancient deed”
- Acknowledged or proved on or before 7/3/1968
- Conveying a cemetery lot or plot
- In specific performance of a final judgment
- Releasing a right of reversion
- Previously recorded in another county & RTF paid
- Divorce
- Conversion to Condo
- Deed by liquidating corporation or partnership to stockholder or partner (only if no consideration/mortgage)

Examples

- Samantha owns a \$5MM property with a \$1MM mortgage. Samantha deeds the property to her daughter, Naomi. The deed is recorded and no RTF is paid. Exception for transfer between parent and child.
- Voyager L.P. owns a property valued at \$800,000 with a \$400,000 mortgage. Its equal partners are Tom and Harry. Voyager L.P. liquidates and distributes 1/2 the property to each member. With \$400,000 as consideration, the total RTF is \$3,215.
 - Note: There would be no RTF if there was no mortgage (or other consideration). See N.J.A.C. 18:16-5.9 (before expiration) – corporation or partnership; doesn't specifically say L.L.C.

Examples *(continued)*

- Atlantis G.P., a general partnership, owns a property valued at \$600,000 with a \$200,000 mortgage. The general partner is Elizabeth; the limited partners are John and Rodney. Elizabeth, John, and Rodney (in the same percentages as in Atlantis G.P.) create Pegasus L.L.C., and under local law, Atlantis G.P. is merged into Pegasus L.L.C., the surviving entity. A deed is executed and recorded to reflect the merger. No RTF because the deed is a confirmatory deed.

What's Important?

- Deed cannot be recorded unless the RTF, if due, is paid.
- A mortgage on the property = consideration.
- Municipality allowed to appeal their own assessment. For example, where a property is sold for \$900,000 but the property is assessed at \$600,000, the municipality may choose to appeal. Consider the LLC method (next slide) to avoid deed on property showing \$900,000.

LLC Method

Example: \$900,000 property with \$500,000 mortgage

Method 1: Direct Sale

- Sale of property for \$900,000
- Realty transfer fee on \$900,000 = **\$8,415**

Compare with

Method 2: LLC Method

- Transfer of property to wholly owned LLC
- Realty transfer fee on \$500,000 = **\$4,175**
- Sale of LLC interest for \$900,000

LLC Method *(continued)*

Example: \$10MM apartment building with \$3MM mortgage

Method 1: Direct Sale

- Sale of property for \$10,000,000
- Realty transfer fee on \$10,000,000 = **\$118,475**

Compare with

Method 2: LLC Method

- Transfer of property to wholly owned LLC
- Realty transfer fee on \$3,000,000 = **\$33,775**
- Sale of LLC interest for \$10,000,000

Mansion Tax

Overview

- Applies to transfers of certain property at \$1MM or more
 - Applies to Class 2 residential property and most commercial real estate, including office buildings and other types of “4A” properties (i.e., retail buildings, etc.)
 - Applies to properties classified as “classified property” by the assessor
 - Some exceptions include:
 - Apartment buildings
 - Industrial property
 - Vacant land
 - Transfers qualifying for an exception from the realty transfer fee
- Tax is 1% of the total consideration to be paid by the buyer

What's Important?

- Paid by grantee of deed (i.e., buyer)
- Property Classification (5 unit rule):
 - Class 2 residential property means a dwelling designed for use and enjoyment by not more than four families.
 - If apartments are designed for the use and enjoyment of five families or more, then Class 4C.
- Does not apply to a deed if the transfer of real property is incidental to a corporate merger/acquisition and the equalized assessed value of the real property transferred is < 20% of the total value of all assets exchanged in the merger/acquisition.

Examples

- Sale of home for \$2MM
 - Subject to mansion tax of \$20,000
- Sale of apartments improperly classified as Class 4A for \$3MM
 - The tax will probably be collected with the filed fee but if you can prove that the properties are really Class 4C apartments, you can probably appeal it and win.
- Sale of property with retail on ground floor, apartments above
 - Depends on whether assessor classification. If classified as 4C: exempt and no mansion tax collected with deed. If classified as 4A: mansion tax would be collected upon deed recording, but could appeal. If the property use is predominately apartments by either space and/or income, probably win.

Controlling Interest Transfer Tax ("CITT")

Overview

- “Backup” to mansion tax
- Tax on the sale or transfer for consideration in excess of \$1MM of a controlling interest in any entity which owns, directly or indirectly a controlling interest in Class 4A property
 - “Controlling interest”:
 - Corporation: > 50% of total combined voting power of all classes of stock
 - Partnership, association, trust: > 50% of the beneficial ownership of that entity
- Paid by purchaser of the controlling interest

Overview *(continued)*

- Applies to any single or series of transactions wherein over 50% of the value of the company is transferred
 - Series of transactions involving different purchasers may be subject to tax if those purchasers are acting in concert
 - If purchasers are related parties, then presumed, unless shown to the contrary, to be a series of transactions constituting a single sale or transfer
 - Transactions within six months are presumed, unless shown to the contrary, to be a series of transactions constituting a single sale or transfer
- If real estate is < 20% value of merger of LLC's, then excluded from tax

Overview *(continued)*

- If LLC owns classified real property, tax is 1% of the consideration paid on the sale/transfer.
- If LLC owns classified real property and an interest in other property, real or personal, then taxed only if the equalized assessed value of the classified real property exceeds \$1MM; tax would be equal to 1% of that percentage of the equalized assessed value of the classified real property equal to the percentage of the ownership interest transferred

What's Important

- With respect to the application of the CITT, New Jersey State Tax News, Volume 45, Number 1, 05/01/2016 presented the Division's position, which conflicts with the statute:
 - “[W]hen there is a sale or transfer of an ownership/membership interest in an entity that owns Class 4A commercial property, and the purchaser/transferee gains a controlling interest as a result of the sale or transfer, the CITT is due if the consideration for the purchase of the interest is in excess of \$1,000,000 in accordance with N.J.S.A. 54:15C-1.” [emphasis added]
 - Example: Prometheus L.L.C. owns a Class 4A commercial property. Samantha and Daniel are equal members. Daniel sells a 10% interest to Samantha in exchange for \$1.5MM. This results in Samantha having a 60% controlling interest. The Division's position is that the CITT is due.
- Compare with N.J.S.A. 54:15C-1: “tax upon the sale or transfer . . . of a controlling interest”