

Senate Bill No. 238—Committee on Taxation

CHAPTER.....

AN ACT relating to taxation; providing certain rights for taxpayers of the tax on the transfer of real property; establishing provisions relating to the collection and enforcement of the tax on the transfer of real property; eliminating certain exemptions from the tax on the transfer of real property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 375 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 24, inclusive, of this act.

Sec. 2. *Section 3 of this act may be cited as the Taxpayers' Bill of Rights for Taxes on the Transfer of Real Property.*

Sec. 3. *1. The legislature hereby declares that each taxpayer has the right:*

(a) To be treated by officers and employees of the county recorder with courtesy, fairness, uniformity, consistency and common sense.

(b) To a prompt response from the county recorder to each communication from the taxpayer.

(c) To provide the minimum documentation and other information as may reasonably be required by the county recorder to carry out his duties.

(d) To be notified, in writing, by the county recorder whenever an officer or employee of the county recorder determines that the taxpayer is entitled to an exemption or has been taxed more than is required pursuant to this chapter.

(e) To written instructions indicating how the taxpayer may petition for a refund for overpayment of real property transfer tax, interest or penalties.

(f) To recover an overpayment of real property transfer tax promptly upon the final determination of such an overpayment.

(g) To obtain specific advice from the county recorder concerning real property transfer tax.

(h) In any meeting with the county recorder, including an audit, conference, interview or hearing:

(1) To an explanation by an officer, agent or employee of the county recorder that describes the procedures to be followed and the rights of the taxpayer thereunder;

(2) To be represented by himself or anyone who is otherwise authorized by law to represent him before the county recorder;

(3) To make an audio recording using the taxpayer's equipment and at the taxpayer's expense; and

(4) To receive a copy of any document or audio recording made by or in the possession of the county recorder relating to the determination or collection of any tax for which the taxpayer is assessed pursuant to this chapter, upon payment of the actual cost to the county recorder of making the copy.

(i) To a full explanation of the authority of the county recorder to collect the real property transfer tax or to collect delinquent real property

transfer tax, including, without limitation, the procedures and notices for review and appeal that are required for the protection of the taxpayer. An explanation which meets the requirements of this section must also be included with each notice to a taxpayer that an audit will be conducted by the county.

(j) To the immediate release of any lien which the county recorder has placed on real property for the nonpayment of the real property transfer tax when:

- (1) The tax is paid;*
- (2) The period of limitation for collecting the tax expires;*
- (3) The lien is the result of an error by the county recorder;*
- (4) The county recorder determines that the taxes, interest and penalties are secured sufficiently by a lien on other real property;*
- (5) The release or subordination of the lien will not jeopardize the collection of the taxes, interest and penalties; or*
- (6) The release of the lien will facilitate the collection of the taxes, interest and penalties.*

(k) To be free from harassment and intimidation by an officer or employee of the county recorder for any reason.

2. The provisions of this chapter governing the administration and collection of taxes by the county recorder must not be construed in such a manner as to interfere or conflict with the provisions of this section or any applicable regulations.

3. The provisions of this section apply to the administration and collection of taxes pursuant to this chapter.

Sec. 4. The county recorder shall cause:

1. To be prepared in simple nontechnical terms a pamphlet setting forth the Taxpayers' Bill of Rights for Taxes on the Transfer of Real Property.

2. A copy of the pamphlet to be distributed:

- (a) To each taxpayer upon request; and*
- (b) With each notice to a taxpayer that an audit will be conducted by the county recorder.*

Sec. 5. The county recorder shall provide each taxpayer who it determines may be liable for taxes pursuant to this chapter with simplified written instructions concerning the rights and responsibilities of the taxpayer, including the:

- 1. Keeping of records sufficient for audit purposes;*
- 2. Procedures for paying the real property transfer tax; and*
- 3. Procedures for challenging any liability for real property transfer tax, penalties or interest and for requesting refunds of erroneously paid real property transfer tax, including the steps for appealing a denial thereof.*

Sec. 6. The county recorder shall provide a taxpayer with a response to any written request submitted by the taxpayer that relates to a real property transfer tax within 30 days after it receives the request.

Sec. 7. A taxpayer is entitled to receive on any overpayment of the real property transfer tax a refund together with interest at a rate determined pursuant to NRS 17.130. No interest is allowed on a refund

of any penalties or interest on the real property transfer tax that is paid by a taxpayer.

Sec. 8. *With regard to the administration of the real property transfer tax, the county recorder shall apply the following principles:*

1. Forms, instructions and regulations governing the computation of the amount of tax due must be brief and easily understood.

2. In cases where another authority, such as the United States or this state, also imposes a tax upon the same property or revenue, the mechanism for collecting the tax imposed by the county must be as nearly compatible with the collection of the other taxes as is feasible.

3. Unless a change is made necessary by statute or to preserve compatibility with a tax imposed by another authority, the forms, instructions and regulations must remain the same from year to year, to make the taxpayer's liability as predictable as is feasible.

4. Exemptions or waivers, where permitted by statute, must be granted:

(a) Equitably among eligible taxpayers; and

(b) As sparingly as is consistent with the legislative intent, to retain the broadest feasible base for the tax.

Sec. 9. *If an officer or employee of the county recorder determines that a taxpayer is entitled to an exemption or has been taxed more than is required by law, he shall give written notice of that determination to the taxpayer. The notice must:*

1. Be given within 30 days after the officer or employee makes his determination or, if the determination is made as a result of an audit, within 30 days after the completion of the audit; and

2. If appropriate, include instructions indicating the manner in which the taxpayer may petition for a refund of any overpayment.

Sec. 10. *The county recorder shall:*

1. Conduct and apply audits and other procedures for enforcement as uniformly as is feasible.

2. Collect real property transfer tax due in an equitable manner, so that every taxpayer pays the full amount imposed by law.

Sec. 11. *1. The county recorder may audit all records relating to the collection and calculation of the real property transfer tax. If the county recorder deems it necessary to conduct an audit, the audit must be completed within 3 years after the date of the original recording of the document that evidences the transfer of property for which the tax was imposed.*

2. The county recorder may issue subpoenas to require the production of documents necessary for him to determine the amount of real property transfer tax due pursuant to this chapter or to determine whether a person qualifies for an exemption from taxes pursuant to this chapter. The county recorder may have the subpoenas served, and upon application of the district attorney, to any court of competent jurisdiction, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

Sec. 12. *1. If an audit is conducted by the county recorder pursuant to the provisions of this chapter, the date on which the audit will be completed must be included in the notice to the taxpayer that the audit will be conducted.*

2. The date on which the audit will be completed may be extended by the county recorder if the county recorder gives prior written notice of the extension to the taxpayer. The notice must include an explanation of the reason or reasons that the extension is required.

3. If, after the audit, the county recorder determines that delinquent taxes are due, interest and penalties may not be imposed for the period of the extension if the taxpayer did not request the extension or was not otherwise the cause of the extension.

Sec. 13. *1. The county recorder may waive any real property transfer tax, penalty and interest owed by the taxpayer if the taxpayer meets the criteria adopted by regulation. If a waiver is granted pursuant to this subsection, the county shall prepare and maintain on file a statement that contains:*

(a) The reason for the waiver;

(b) The amount of the tax, penalty and interest owed by the taxpayer; and

(c) The amount of the tax, penalty and interest waived by the county.

2. If the county recorder or a designated hearing officer finds that the failure of a person to make a timely payment of the real property transfer tax imposed is the result of circumstances beyond his control and occurred despite the exercise of ordinary care and without intent to avoid such payment, the county recorder may relieve him of all or part of any interest or penalty or both.

3. If a person proves to the satisfaction of the county recorder that he has in good faith remitted the real property transfer tax in reliance upon written advice provided by an officer or employee of the county recorder, an opinion of the district attorney or attorney general, or the written results of an audit of his records conducted by the county recorder, the county recorder may not require the taxpayer to pay delinquent taxes, penalties or interest if the county recorder determines after the completion of a subsequent audit that the taxes the taxpayer remitted were deficient.

Sec. 14. *Any amount determined to be refundable by the county recorder after an audit must be refunded to the taxpayer. If it is not possible to determine who paid the tax, the refund must be split equally between the seller and buyer.*

Sec. 15. *1. After reviewing a petition for a refund, the county recorder or his designee shall approve or disapprove the refund. If the county recorder approves the refund, he shall grant the refund to the taxpayer.*

2. If the county recorder denies a refund, the petitioner may file a written notice of appeal to the county recorder within 45 days after the date the county recorder decides to deny the petition. If notice is not received by the county recorder within 45 days after his decision to deny the petition, the decision of the county recorder is final.

3. *If the county recorder receives a timely notice of appeal pursuant to subsection 2, he shall set a date for a hearing before a hearing officer and notify the parties of the date, place and time of the hearing.*

Sec. 16. *1. Any person who is aggrieved by a decision of the county recorder made pursuant to this chapter may appeal the decision by filing a notice of appeal with the county recorder within 30 days after service of the decision upon that person.*

2. A hearing officer, appointed by the county, may review any decision made by the county recorder and may reverse, affirm or modify any decision of the county recorder. A hearing officer appointed pursuant to this section must not be an employee of the county recorder's office. A decision of a hearing officer is a final decision for purposes of judicial review.

3. Service of a decision made by the county recorder or a hearing officer pursuant to this chapter must be made personally or by certified mail. If service is made by certified mail:

(a) The decision must be enclosed in an envelope that is addressed to the taxpayer at his address as it appears on the declaration of value or in the records of the county.

(b) It is deemed to be complete at the time the appropriately addressed envelope containing the decision is deposited with the United States Postal Service.

4. All decisions of the county recorder made pursuant to this chapter are final unless appealed.

5. A county recorder or local government that is a party and is aggrieved by the decision of the hearing officer may seek judicial review of the decision in the district court of that county.

Sec. 17. *In an action relating to a tax imposed pursuant to this chapter, process must be served:*

1. In accordance with the requirements for service of process set forth in the Nevada Rules of Civil Procedure; or

2. By serving both the buyer and the seller at their place of residence in this state or their last known address.

Sec. 18. *A certificate by the county recorder stating that real property has been released from a lien imposed pursuant to this chapter is conclusive evidence that the property has been released.*

Sec. 19. *1. The amounts, including interest and penalties, required to be paid by any person pursuant to this chapter must be satisfied first if:*

(a) The person is insolvent;

(b) The person makes a voluntary assignment of his assets;

(c) The estate of the person in the hands of executors, administrators or heirs, before distribution, is insufficient to pay all the debts due from the deceased; or

(d) The estate and effects of an absconding, concealed or absent person required to pay any amount by force of such a revenue act are levied upon by process of law.

2. This section does not give the county recorder a preference over:

(a) Any recorded lien that attached before the date when the amounts required to be paid became a lien; or

(b) Any costs of administration, funeral expenses, expenses of personal illness, family allowances or debts preferred pursuant to federal law or wages as provided in NRS 150.220.

Sec. 20. *1. The county or its authorized representative may issue a warrant for the enforcement of a lien and for the collection of any delinquent tax that is administered pursuant to this chapter:*

(a) Within 3 years after the person is delinquent in the payment of the tax; or

(b) Within 5 years after the last recording of a certificate copy constituting a lien for the tax.

2. The warrant must be directed to a sheriff or constable and has the same effect as a writ of execution.

3. The warrant must be levied and sale made pursuant to the warrant in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

Sec. 21. *The county may pay or advance to the sheriff or constable the same fees, commissions and expenses for acting upon the warrant as are provided by law for acting upon a writ of execution. The county must approve the fees for publication in a newspaper. Approval from a court is not required for the publication.*

Sec. 22. *1. If a person is delinquent in the payment of the real property transfer tax or has not paid the amount of a deficiency determination, the county may bring an action in a court of this state, a court of any other state or a court of the United States that has competent jurisdiction to collect the delinquent or deficient amount, penalties and interest. The action:*

(a) May not be brought if the decision that the payment is delinquent or that there is a deficiency determination is on appeal to a hearing officer pursuant to section 16 of this act.

(b) Must be brought not later than 3 years after the payment became delinquent or the determination became final.

2. The district attorney shall prosecute the action. The provisions of the Nevada Revised Statutes, Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings. In the action, a writ of attachment may issue. A bond or affidavit is not required before an attachment may be issued.

3. In an action, a certificate by the county recorder showing the delinquency is prima facie evidence of:

(a) The determination of the tax or the amount of the tax;

(b) The delinquency of the amounts; and

(c) The compliance by the county recorder with all the procedures required by law relating to the computation and determination of the amounts.

Sec. 23. *The lien may, within 5 years after the date of the judgment or within 5 years after the last extension of the lien in a manner provided in this chapter, be extended by recording in the office of the county recorder a certified copy of the judgment, and from the time of that recording, the lien must be extended upon the property in that county for 5 years unless sooner released or otherwise discharged.*

Sec. 24. *1. If any real property transfer tax imposed pursuant to this chapter is not paid when due, the county may, within 3 years after the date that the tax was due, record a certificate in the office of the county recorder which states:*

(a) The amount of the real property transfer tax and any interest or penalties due;

(b) The name and address of the person who is liable for the amount due as they appear on the records of the county; and

(c) That the county recorder has complied with all procedures required by law for determining the amount due.

2. From the time of the recording of the certificate, the amount due, including interest and penalties, constitutes:

(a) A lien upon the real property for which the tax was due if the person who owes the tax still owns the property; or

(b) A demand for payment if the property has been sold or otherwise transferred to another person.

3. The lien has the effect and priority of a judgment lien and continues for 5 years after the time of the recording of the certificate unless sooner released or otherwise discharged.

4. Within 5 years after the date of the judgment or within 5 years after the date of the last extension of the lien pursuant to this subsection, the lien may be extended by recording a certified copy of the judgment in the office of the county recorder. From the time of recording the judgment, the lien is extended for 5 years, unless sooner released or otherwise discharged.

Sec. 25. NRS 375.010 is hereby amended to read as follows:

375.010 The following terms, wherever used or referred to in this chapter, have the following meaning unless a different meaning clearly appears in the context:

1. "Buyer" means a person or other legal entity acquiring title to any estate or present interest in real property in this state by deed, including, without limitation, a grantee or other transferee of real property.

2. "Deed" means every instrument in writing, except a last will and testament, whatever its form, and by whatever name it is known in law, by which title to any estate or present interest in real property, including a water right, permit, certificate or application, is conveyed or transferred to, and vested in, another person, but does not include a lease for any term of years, ~~to~~ an easement ~~to~~, *a deed of trust or common law mortgage instrument that encumbers real property, an affidavit of surviving tenant or a conveyance of a right of way.*

3. "Escrow" means the delivery of a deed by the seller into the hands of a third person, including an attorney, title company, real estate broker or other person engaged in the business of administering escrows for compensation, to be held by the third person until the happening of a contingency or performance of a condition, and then to be delivered by the third person to the buyer.

4. "Seller" means a person or other legal entity transferring title to any estate or present interest in real property in this state by deed, including, without limitation, a grantor or other transferor of real property.

5. "Value" means:

(a) In the case of any deed not a gift, the amount of the full ~~actual consideration~~ *purchase price* paid or to be paid for the real property ~~. *excluding the amount of any lien or liens assumed.*~~

(b) In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated ~~price the real property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.~~ *fair market value of the property.*

As used in this section, “estimated fair market value” means the estimated price the real property would bring on the open market in a sale between a willing buyer and a willing seller. Such price may be derived from the assessor’s taxable value or the prior purchase price, if the prior purchase was within the 5 years immediately preceding the date of valuation, whichever is higher.

Sec. 26. NRS 375.020 is hereby amended to read as follows:

375.020 1. A tax, at the rate of:

(a) In a county whose population is 400,000 or more, \$1.25; and

(b) In a county whose population is less than 400,000, 65 cents, for each \$500 of value or fraction thereof, is hereby imposed on each deed by which any lands, tenements or other realty is granted, assigned, transferred or otherwise conveyed to, or vested in, another person, if the consideration or value of the interest or property conveyed ~~exclusive of the value of any lien or encumbrance remaining on the interest or property at the time of sale.~~ exceeds \$100.

2. The amount of tax must be computed on the basis of the value of the transferred real property as declared pursuant to NRS 375.060.

Sec. 27. NRS 375.030 is hereby amended to read as follows:

375.030 1. If any deed evidencing a transfer of title subject to the tax imposed by NRS 375.020 and, if applicable, NRS 375.025, is offered for recordation, the county recorder shall compute the amount of the tax due and shall collect that amount before acceptance of the deed for recordation.

2. The buyer and seller are jointly and severally liable for the payment of the taxes imposed by NRS 375.020 and 375.025 and any penalties and interest imposed pursuant to subsection 3. The escrow holder is not liable for the payment of the taxes imposed by NRS 375.020 and 375.025 or any penalties or interest imposed pursuant to subsection 3.

3. If after recordation of the deed, the county recorder disallows an exemption that was claimed at the time the deed was recorded or through audit or otherwise determines that an additional amount of tax is due, the county recorder shall promptly notify the *person who requested the recording of the deed and the* buyer ~~for seller, or both,~~ *and seller* of the additional amount of tax due. ~~In addition to the additional amount determined to be due,~~ *If the additional amount of tax is not paid within 30 days after the date the buyer and seller are notified,* the county recorder shall impose a penalty of 10 percent of the additional amount due in addition to interest at the rate of 1 ~~1/2~~ percent per month, or portion thereof, of the additional amount due calculated from the date of the original recordation of the deed on which the additional amount is due

through the date on which the additional amount due, penalty and interest are paid to the county recorder.

4. This section does not prohibit a buyer and seller from agreeing by contract or otherwise that one party or the other will be responsible for the payment of the tax due pursuant to this chapter, but such an agreement does not affect the ability of the county recorder to collect the tax and any penalties and interest from either the buyer or the seller.

Sec. 28. NRS 375.090 is hereby amended to read as follows:

375.090 The tax imposed by NRS 375.020 and 375.025 does not apply to:

1. ~~Any transaction wherein an interest in real property is encumbered for the purposes of securing a debt.~~ *A mere change in identity, form or place of organization, such as a transfer between a corporation and its parent corporation, a subsidiary or an affiliated corporation if the affiliated corporation has identical common ownership.*

2. A transfer of title to ~~for from~~ the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.

3. A transfer of title recognizing the true status of ownership of the real property.

4. A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint tenants or tenants in common.

5. A transfer of title to community property without consideration when held in the name of one spouse to both spouses as joint tenants or tenants in common, or as community property.

6. A transfer of title between spouses, including gifts.

7. A transfer of title between spouses to effect a property settlement agreement or between former spouses in compliance with a decree of divorce.

8. A transfer of title to or from a trust, if the transfer is made without consideration ~~to~~, *and is made to or from:*

(a) The trustor of the trust;

(b) The trustor's legal representative; or

(c) A person related to the trustor in the first degree of consanguinity.

As used in this subsection, "legal representative" has the meaning ascribed to it in NRS 167.020.

9. Transfers, assignments or conveyances of unpatented mines or mining claims.

10. A transfer, assignment or other conveyance of real property to a corporation or other business organization if the person conveying the property owns 100 percent of the corporation or organization to which the conveyance is made.

11. A transfer, assignment or conveyance of real property if the owner of the property is related to the person to whom it is conveyed within the first degree of consanguinity.

12. The making, delivery or filing of conveyances of real property to make effective any plan of reorganization or adjustment:

(a) Confirmed under the Bankruptcy Act, as amended, ~~{Title 11 of U.S.C.}~~ **11 U.S.C. §§ 101 et seq.;**

(b) Approved in an equity receivership proceeding involving a railroad , as defined in the Bankruptcy Act; **or**

(c) Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act , ~~{-or-~~

~~—(d) Whereby a mere change in identity, form or place of organization is effected, such as a transfer between a corporation and its parent corporation, a subsidiary of an affiliated corporation,}~~

if the making, delivery or filing of instruments of transfer or conveyance occurs within 5 years after the date of the confirmation, approval or change.

13. The making or delivery of conveyances of real property to make effective any order of the Securities and Exchange Commission if:

(a) The order of the Securities and Exchange Commission in obedience to which the transfer or conveyance is made recites that the transfer or conveyance is necessary or appropriate to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79k;

(b) The order specifies and itemizes the property which is ordered to be transferred or conveyed; and

(c) The transfer or conveyance is made in obedience to the order.

14. A transfer to ~~{or from}~~ an educational foundation. As used in this subsection, “educational foundation” has the meaning ascribed to it in subsection 3 of NRS 388.750.

15. A transfer to ~~{or from}~~ a university foundation. As used in this subsection, “university foundation” has the meaning ascribed to it in subsection 3 of NRS 396.405.

16. A transfer, assignment or other conveyance of real property to a corporation sole from another corporation sole. As used in this subsection, “corporation sole” means a corporation which is organized pursuant to the provisions of chapter 84 of NRS.

Sec. 29. NRS 375.100 is hereby amended to read as follows:

375.100 The county recorder shall refuse to record any deed or conveyance upon which a tax is imposed by this chapter if the tax has not been paid ~~{}~~ **and is not subject to liability for refusing to record a deed or conveyance for which a tax imposed pursuant to this chapter has not been paid.**

Sec. 30. The provisions of subsection 1 of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 31. 1. This section and sections 1 to 12, inclusive, and 24 to 30, inclusive, of this act become effective on October 1, 2001.

2. Sections 13 to 23, inclusive, of this act become effective on January 1, 2002.