

ASSEMBLY BILL NO. 245—ASSEMBLYMAN MARVEL
(BY REQUEST)

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing taxes on transfer of real property. (BDR 32-163)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to taxation; clarifying that certain taxes on the transfer of real property apply to transfers of controlling interest in business entities that own real property in this State; requiring the proceeds of the taxes on such transfers to be used for the maintenance of public buildings; establishing the Fund for Maintenance of Public Buildings into which such proceeds must be deposited; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 375.010 is hereby amended to read as follows:
- 2 375.010 1. The following terms, wherever used or referred to
- 3 in this chapter, have the following ~~meaning~~ *meanings* unless a
- 4 different meaning clearly appears in the context:
- 5 (a) *“Business” means any activity engaged in or caused to be*
- 6 *engaged in by a business entity with the object of gain, benefit or*
- 7 *advantage, either direct or indirect, to any person.*
- 8 (b) *“Business entity” includes:*
- 9 (1) *A corporation, partnership, proprietorship, limited-*
- 10 *liability company, business association, joint venture, limited-*
- 11 *liability partnership, business trust and their equivalents organized*
- 12 *under the laws of this State or another jurisdiction and any other*
- 13 *type of entity that engages in business.*



(2) *A business conducted by a natural person if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, or a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, for the business.*

(c) “Buyer” means a person or other legal entity acquiring title to any estate or present interest in real property in this State , *or controlling interest in a business entity that owns real property in this State*, by deed . ~~[, including,]~~ *The term includes*, without limitation, a grantee or other transferee of real property.

~~[(b)]~~ (d) *“Controlling interest” means:*

(1) *In the case of a corporation, more than 50 percent of the total combined voting power of all classes of stock of the corporation; and*

(2) *In the case of a partnership, association, trust or other business entity, more than 50 percent of the capital, profits or beneficial interest of the business entity.*

(e) “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,]~~ *in this State, or controlling interest in a business entity that owns real property in this State*, is conveyed or transferred to, and vested in, another person . ~~[, but does not include a lease for any term of years, an easement, 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.~~

~~—(e)]~~ (f) “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.

~~[(d)]~~ (g) *“Real property” includes, without limitation, a water right, permit, certificate or application, but does not include a lease for any term of years, an easement, 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.*

(h) “Seller” means a person or other legal entity transferring title to any estate or present interest in real property in this State , *or controlling interest in a business entity that owns real property in this State*, by deed . ~~[, including,]~~ *The term includes*, without limitation, a grantor or other transferor of real property.



~~[(e)]~~ (i) “Value” means:

(1) In the case of any deed not a gift, the amount of the full purchase price paid or to be paid for the real property.

(2) In the case of a gift, or any deed with nominal consideration or without stated consideration, *or a deed for controlling interest in a business entity that owns real property in this State*, the estimated fair market value of the *real* property.

2. As used in paragraph ~~[(e)]~~ (i) of subsection 1, “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. 2. NRS 375.019 is hereby amended to read as follows:

375.019 1. The Department shall, to ensure that the tax imposed by NRS 375.023 is collected fairly and equitably in all counties, coordinate the collection and administration of that tax. For this purpose, the Department ~~[may]~~ :

(a) *Shall adopt regulations and publish guidelines, statements of policy and interpretative opinions; and*

(b) *May* conduct such audits of the records of the various counties as are necessary to carry out the provisions of NRS 375.023.

2. When requested, the Department shall render assistance to the county recorder of a county whose population is less than 30,000 relating to the imposition and collection of the ~~[tax]~~ *taxes* imposed by NRS 375.023.

3. The Department is not entitled to receive any fee for rendering any assistance pursuant to subsection 2.

Sec. 3. 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 exceeds \$100.

2. *Except as otherwise provided in NRS 375.090, the tax imposed pursuant to subsection 1 applies, without limitation, to any deed by which controlling interest in a business entity that owns real property in this State is granted, assigned, transferred or otherwise conveyed to, or vested in, another person.*



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

4 **Sec. 4.** NRS 375.023 is hereby amended to read as follows:

5 375.023 1. In addition to all other taxes imposed on transfers
6 of real property, a tax, at the rate of \$1.30 on each \$500 of value or
7 fraction thereof, is hereby imposed on each deed by which any
8 lands, tenements or other realty is granted, assigned, transferred or
9 otherwise conveyed to, or vested in, another person, if the
10 consideration or value of the interest or property conveyed exceeds
11 \$100.

12 2. *Except as otherwise provided in NRS 375.090, the tax*
13 *imposed pursuant to subsection 1 applies, without limitation, to*
14 *any deed by which controlling interest in a business entity that*
15 *owns real property in this State is granted, assigned, transferred or*
16 *otherwise conveyed to, or vested in, another person.*

17 **3.** The amount of the tax must be computed on the basis of the
18 value of the transferred property as declared pursuant to
19 NRS 375.060.

20 ~~3-1~~ **4.** The county recorder of each county shall collect the tax
21 in the manner provided in NRS 375.030, except that ~~the~~ :

22 (a) *An amount equal to that portion of the proceeds that is*
23 *collected for any deed by which controlling interest in a business*
24 *entity that owns real property in this State is granted, assigned,*
25 *transferred or otherwise conveyed to, or vested in, another person*
26 *must be transmitted to the State Controller for deposit in the Fund*
27 *for Maintenance of Public Buildings created by section 7 of this*
28 *act; and*

29 (b) *The remaining* amount collected must be transmitted to the
30 State Controller for deposit in the State General Fund .

31 *These amounts must be transmitted* within 30 days after the end
32 of the calendar quarter during which the tax was collected.

33 ~~4-1~~ **5.** The county recorder of a county:

34 (a) Whose population is 100,000 or more may deduct and
35 withhold from the taxes collected 0.2 percent of those taxes to
36 reimburse the county for the cost of collecting the tax.

37 (b) Whose population is less than 100,000 may deduct and
38 withhold from the taxes collected 1 percent of those taxes to
39 reimburse the county for the cost of collecting the tax.

40 **Sec. 5.** NRS 375.030 is hereby amended to read as follows:

41 375.030 1. If any deed evidencing a transfer of title , *or a*
42 *deed for controlling interest in a business entity that owns real*
43 *property in this State, that is* subject to the tax imposed by NRS
44 375.020 and 375.023 and, if applicable, NRS 375.026 , is offered for
45 recordation, the county recorder shall compute the amount of the tax



1 due and shall collect that amount before acceptance of the deed for
2 recordation.

3 2. The buyer and seller are jointly and severally liable for the
4 payment of the taxes imposed by NRS 375.020, 375.023 and
5 375.026 and any penalties and interest imposed pursuant to
6 subsection 3. The escrow holder is not liable for the payment of the
7 taxes imposed by NRS 375.020, 375.023 and 375.026 or any
8 penalties or interest imposed pursuant to subsection 3.

9 3. If , after recordation of the deed, the county recorder
10 disallows an exemption that was claimed at the time the deed was
11 recorded or through audit or otherwise determines that an additional
12 amount of tax is due, the county recorder shall promptly notify the
13 person who requested the recording of the deed and the buyer and
14 seller of the additional amount of tax due. If the additional amount
15 of tax is not paid within 30 days after the date the buyer and seller
16 are notified, the county recorder shall impose a penalty of
17 10 percent of the additional amount due in addition to interest at the
18 rate of 1 percent per month, or portion thereof, of the additional
19 amount due calculated from the date of the original recordation of
20 the deed on which the additional amount is due through the date on
21 which the additional amount due, penalty and interest are paid to the
22 county recorder.

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

29 **Sec. 6.** NRS 375.060 is hereby amended to read as follows:

30 375.060 Each deed evidencing a transfer of title of real
31 property *or controlling interest in a business entity that owns real*
32 *property in this State* that is presented for recordation to the county
33 recorder must be accompanied by a declaration of value made on a
34 form prescribed by the Nevada Tax Commission.

35 **Sec. 7.** Chapter 331 of NRS is hereby amended by adding
36 thereto a new section to read as follows:

37 *1. The Fund for Maintenance of Public Buildings is hereby*
38 *created in the State Treasury.*

39 *2. The State Controller shall deposit in the Fund the proceeds*
40 *of the tax on transfers of controlling interest in business entities*
41 *that own real property in this State received pursuant to*
42 *NRS 375.023.*

43 *3. The State Treasurer shall administer the Fund. As*
44 *administrator of the Fund, the State Treasurer:*

45 *(a) Shall maintain the financial records of the Fund;*



1 (b) *Shall invest the money in the Fund as the money in other*
2 *state funds is invested;*

3 (c) *Shall manage any account associated with the Fund;*

4 (d) *Shall maintain any instruments that evidence investments*
5 *made with the money in the Fund;*

6 (e) *May transfer to the appropriate account not more than*
7 *2 percent of the money in the Fund each year to pay the costs*
8 *incurred by the State Treasurer to administer the Fund; and*

9 (f) *May perform any other duties necessary to administer the*
10 *Fund.*

11 4. *The interest and income earned on the money in the Fund*
12 *must, after deducting any applicable charges, be credited to the*
13 *Fund. All claims against the Fund must be paid as other claims*
14 *against the State are paid. The money in the Fund remains in the*
15 *Fund and does not revert to the State General Fund at the end of*
16 *any fiscal year.*

17 5. *All money that is deposited or paid into the Fund is hereby*
18 *appropriated to the Buildings and Grounds Division and, except as*
19 *otherwise provided in this section, must be used to pay for the*
20 *maintenance of public buildings pursuant to policies and priorities*
21 *established by the Chief.*

22 6. *If the Chief determines that the amount of money in the*
23 *Fund that is available for expenditure in a fiscal year exceeds the*
24 *amount needed for the maintenance of public buildings in that*
25 *year, he may, with the approval of the Interim Finance Committee*
26 *when the Legislature is not in regular or special session, or with*
27 *the approval of the Legislature by concurrent resolution when the*
28 *Legislature is in regular or special session:*

29 (a) *Expend money from the Fund to pay for the maintenance*
30 *of a public building owned by a local government or school*
31 *district; and*

32 (b) *Transfer money from the Fund to the State Public Works*
33 *Board to support the Board in carrying out a program of capital*
34 *construction approved by the Legislature.*

35 7. *The amount of money expended from the Fund in any*
36 *fiscal year must not exceed the sum of:*

37 (a) *The amount of interest and income earned on the money in*
38 *the Fund; and*

39 (b) *Ten percent of the principal balance of the Fund.*

40 8. *For the purposes of this section, the amount of money in*
41 *the Fund available for expenditure or transfer in a fiscal year*
42 *must be calculated at the beginning of the fiscal year based on the*
43 *total amount of money anticipated by the State Treasurer to be*
44 *deposited in the Fund during that fiscal year.*



1 **9. As used in this section:**

2 (a) *“Local government” has the meaning ascribed to it in*
3 *NRS 332.015.*

4 (b) *“Public building” includes, without limitation, a building*
5 *owned or otherwise controlled by the State or a department,*
6 *district, authority, board or public corporation of the State,*
7 *including, without limitation, the University and Community*
8 *College System of Nevada. The term does not include a building*
9 *owned or otherwise controlled by a local government.*

10 **Sec. 8.** This act becomes effective on July 1, 2005.



