

SENATE BILL NO. 390—COMMITTEE ON TAXATION

MARCH 29, 2005

Referred to Committee on Taxation

SUMMARY—Makes various changes regarding applicability and administration of certain taxes on transfers of real property. (BDR 32-760)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 transfers of real property; making various changes regarding the applicability and administration of certain taxes on transfers 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 a new section to read as follows:

1. A county recorder who has any question of law regarding the imposition or collection of any tax imposed by this chapter shall request an opinion from the Attorney General.

2. Upon receiving such a request, the Attorney General shall give his opinion, in writing, to the county recorder. The Attorney General is not entitled to receive any fee for rendering the opinion.

Sec. 2. NRS 375.010 is hereby amended to read as follows:

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

(a) “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.



(b) "Deed" means every instrument in writing, ~~except a last will and testament,~~ whatever its form ~~is~~ 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~~ *except that the term* does not include ~~a~~ :

(1) A lease for any term of years ~~an easement, a~~ ;

(2) *An easement;*

(3) A deed of trust or common-law mortgage instrument that encumbers real property ~~an~~ ;

(4) *A last will and testament;*

(5) *A distribution of the separate property of a decedent pursuant chapter 134 of NRS;*

(6) *An* affidavit of *a* surviving tenant ~~for a~~ ;

(7) A conveyance of a right-of-way ~~is~~ ; *or*

(8) *A conveyance of an interest in gas, oil or minerals.*

(c) "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) "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.

(e) "Value" means:

(1) In the case of any deed *which is* 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, the estimated fair market value of the property.

2. As used in paragraph (e) 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. 3. 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 conduct such audits of the



1 records of the various counties as are necessary to carry out the
2 provisions of NRS 375.023.

3 2. When requested, the Department shall render assistance to
4 the county recorder of a county whose population is less than 30,000
5 relating to the imposition and collection of the tax imposed by
6 NRS 375.023.

7 3. *The Department shall not render opinions on questions of*
8 *law that are required to be submitted to the Attorney General*
9 *pursuant to section 1 of this act.*

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

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

13 375.023 1. In addition to all other taxes imposed on transfers
14 of real property, a tax, at the rate of \$1.30 on each \$500 of value or
15 fraction thereof, is hereby imposed on each deed by which any
16 lands, tenements or other realty is granted, assigned, transferred or
17 otherwise conveyed to, or vested in, another person, if the
18 consideration or value of the interest or property conveyed exceeds
19 \$100.

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

23 3. The county recorder of each county shall collect the tax in
24 the manner provided in NRS 375.030, except that the amount
25 collected must be transmitted to the State Controller for deposit in
26 the State General Fund within 30 days after the end of the calendar
27 quarter during which the tax was collected.

28 4. The county recorder of ~~each county:~~
29 ~~—(a) Whose population is 100,000 or more may deduct and~~
30 ~~withhold from the taxes collected 0.2 percent of those taxes to~~
31 ~~reimburse the county for the cost of collecting the tax.~~
32 ~~—(b) Whose population is less than 100,000]~~ *each county* may
33 deduct and withhold from the taxes collected 1 percent of those
34 taxes to reimburse the county for the cost of collecting the tax.

35 **Sec. 5.** NRS 375.060 is hereby amended to read as follows:

36 375.060 1. Each deed evidencing a transfer of title of real
37 property that is presented for recordation to the county recorder
38 must be accompanied by a declaration of value made on a form
39 prescribed by the Nevada Tax Commission.

40 2. *A county recorder shall not charge or collect any fees for*
41 *recording the declaration of value required pursuant to this*
42 *section.*

43 **Sec. 6.** NRS 375.090 is hereby amended to read as follows:

44 375.090 The taxes imposed by NRS 375.020, 375.023 and
45 375.026 do not apply to:



1 1. ~~[A mere change in identity, form or place of organization,~~
2 ~~such as a transfer between a corporation and its parent corporation, a~~
3 ~~subsidiary or an affiliated corporation if the affiliated corporation~~
4 ~~has identical common ownership.~~

5 ~~—2.]~~ A transfer of title to the United States, any territory or state
6 or any agency, department, instrumentality or political subdivision
7 thereof.

8 ~~[3.]~~ 2. A transfer of title recognizing the true status of
9 ownership of the real property.

10 ~~[4.]~~ 3. A transfer of title without consideration from one joint
11 tenant or tenant in common to one or more remaining joint tenants
12 or tenants in common.

13 4. *A transfer, assignment or other conveyance of real*
14 *property if the owner of the property is related to the person to*
15 *whom it is conveyed within the first degree of lineal consanguinity*
16 *or affinity.*

17 5. A transfer of title between ~~[spouses, including gifts, or to~~
18 ~~effect a property settlement agreement or between]~~ former spouses
19 in compliance with a decree of divorce.

20 6. A transfer of title to or from a trust without consideration if a
21 certificate of trust is presented at the time of transfer.

22 7. Transfers, assignments or conveyances of unpatented mines
23 or mining claims.

24 8. ~~[A transfer, assignment or other conveyance of real property~~
25 ~~to a corporation or other business organization if the person~~
26 ~~conveying the property owns 100 percent of the corporation or~~
27 ~~organization to which the conveyance is made.~~

28 ~~—9.— A transfer, assignment or other conveyance of real property~~
29 ~~if the owner of the property is related to the person to whom it is~~
30 ~~conveyed within the first degree of consanguinity.~~

31 ~~—10.]~~ The making, delivery or filing of conveyances of real
32 property to make effective any plan of reorganization or adjustment:

33 (a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C.
34 §§ 101 et seq.;

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

37 (c) Approved in an equity receivership proceeding involving a
38 corporation, as defined in the Bankruptcy Act,

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

42 ~~[11.]~~ 9. The making or delivery of conveyances of real
43 property to make effective any order of the Securities and Exchange
44 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.

~~[12.]~~ **10.** A transfer to an educational foundation. As used in this subsection, "educational foundation" has the meaning ascribed to it in subsection 3 of NRS 388.750.

~~[13.]~~ **11.** A transfer to a university foundation. As used in this subsection, "university foundation" has the meaning ascribed to it in subsection 3 of NRS 396.405.

Sec. 7. NRS 375.330 is hereby amended to read as follows:

375.330 1. The county recorder may waive any tax, penalty and interest owed by the taxpayer pursuant to this chapter, other than the tax imposed by NRS 375.023, 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 any 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 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. 8. NRS 247.305 is hereby amended to read as follows:

247.305 1. If another statute specifies the fee to be charged for a service, county recorders shall charge and collect only the fee



specified. Otherwise, *unless prohibited by NRS 375.060*, county recorders shall charge and collect the following fees:

For recording any document, for the first page	\$10
For each additional page	1
For recording each portion of a document which must be separately indexed, after the first indexing.....	3
For copying any record, for each page	1
For certifying, including certificate and seal.....	4
For a certified copy of a certificate of marriage	10
For a certified abstract of a certificate of marriage	10

2. Except as otherwise provided in this subsection ~~[]~~ *and NRS 375.060*, a county recorder may charge and collect, in addition to any fee that a county recorder is otherwise authorized to charge and collect, an additional fee not to exceed \$3 for recording a document, instrument, paper, notice, deed, conveyance, map, chart, survey or any other writing. A county recorder may not charge the additional fee authorized in this subsection for recording the originally signed copy of a certificate of marriage described in NRS 122.120. On or before the fifth day of each month, the county recorder shall pay ~~to the county treasurer~~ the amount of fees collected by him pursuant to this subsection *to the county treasurer* for credit to the account established pursuant to NRS 247.306.

3. Except as otherwise provided in this subsection ~~[]~~ *and NRS 375.060*, a county recorder shall charge and collect, in addition to any fee that a county recorder is otherwise authorized to charge and collect, an additional fee of \$1 for recording a document, instrument, paper, notice, deed, conveyance, map, chart, survey or any other writing. A county recorder shall not charge the additional fee authorized in this subsection for recording the originally signed copy of a certificate of marriage described in NRS 122.120. On or before the fifth day of each month, the county recorder shall pay ~~to the county treasurer~~ the amount of fees collected by him pursuant to this subsection ~~[]~~ *to the county treasurer*. On or before the 15th day of each month, the county treasurer shall remit the money received by him pursuant to this subsection to the State Treasurer for credit to the Account to Assist Persons Formerly in Foster Care established pursuant to NRS 423.137.

4. Except as otherwise provided in this subsection, subsection 5 or by specific statute, a county recorder shall charge and collect, in addition to any fee that a county recorder is otherwise authorized to charge and collect, an additional fee of \$25 for recording any document that does not meet the standards set forth in subsection 3



1 of NRS 247.110. A county recorder shall not charge the additional
2 fee authorized by this subsection for recording a document that is
3 exempt from the provisions of subsection 3 of NRS 247.110.

4 5. Except as otherwise provided in subsection 6, a county
5 recorder shall not charge or collect any fees for any of the services
6 specified in this section when rendered by him to:

7 (a) The county in which his office is located.

8 (b) The State of Nevada or any city or town within the county in
9 which his office is located, if the document being recorded:

10 (1) Conveys to the State, or to that city or town, an interest in
11 land;

12 (2) Is a mortgage or deed of trust upon lands within the
13 county which names the State or that city or town as beneficiary;

14 (3) Imposes a lien in favor of the State or that city or town;
15 or

16 (4) Is a notice of the pendency of an action by the State or
17 that city or town.

18 6. A county recorder shall charge and collect the fees specified
19 in this section for copying ~~to~~ any document at the request of the
20 State of Nevada, and any city or town within the county. For
21 copying, and for his certificate and seal upon the copy, the county
22 recorder shall charge the regular fee.

23 7. For *the* purposes of this section, "State of Nevada,"
24 "county," "city" and "town" include any department or agency
25 thereof and any officer thereof in his official capacity.

26 8. Except as otherwise provided in subsection 2 or 3 or by an
27 ordinance adopted pursuant to the provisions of NRS 244.207,
28 county recorders shall, on or before the fifth working day of each
29 month, account for and pay to the county treasurer all such fees
30 collected during the preceding month.

31 **Sec. 9.** NRS 252.160 is hereby amended to read as follows:

32 252.160 ~~[The]~~

33 *1. Except as otherwise provided in this section, the* district
34 attorney shall, without fees, give his legal opinion to any assessor,
35 collector, auditor or county treasurer, and to all other county,
36 township or district officers within his county, in any matter relating
37 to the duties of their respective offices.

38 *2. The district attorney shall not give his legal opinion*
39 *regarding questions of law that are required to be submitted to the*
40 *Attorney General by a county recorder pursuant to section 1 of*
41 *this act.*

42 **Sec. 10.** NRS 388.750 is hereby amended to read as follows:

43 388.750 1. An educational foundation:

44 (a) Shall comply with the provisions of chapter 241 of NRS;



(b) Except as otherwise provided in subsection 2, shall make its records public and open to inspection pursuant to NRS 239.010; and

(c) Is exempt from the taxes imposed by NRS 375.020, 375.023 and 375.026 pursuant to subsection ~~H2~~ 10 of NRS 375.090.

2. An educational foundation is not required to disclose the names of the contributors to the foundation or the amount of their contributions. The educational foundation shall, upon request, allow a contributor to examine, during regular business hours, any record, document or other information of the foundation relating to that contributor.

3. As used in this section, "educational foundation" means a nonprofit corporation, association or institution or a charitable organization that is:

(a) Organized and operated exclusively for the purpose of supporting one or more kindergartens, elementary schools, junior high or middle schools or high schools, or any combination thereof;

(b) Formed pursuant to the laws of this State; and

(c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

Sec. 11. NRS 396.405 is hereby amended to read as follows:

396.405 1. A university foundation:

(a) Shall comply with the provisions of chapter 241 of NRS;

(b) Except as otherwise provided in subsection 2, shall make its records public and open to inspection pursuant to NRS 239.010;

(c) Is exempt from the taxes imposed by NRS 375.020, 375.023 and 375.026 pursuant to subsection ~~H3~~ 11 of NRS 375.090; and

(d) May allow a president or an administrator of the university or community college which it supports to serve as a member of its governing body.

2. A university foundation is not required to disclose the name of any contributor or potential contributor to the university foundation, the amount of his contribution or any information which may reveal or lead to the discovery of his identity. The university foundation shall, upon request, allow a contributor to examine, during regular business hours, any record, document or other information of the foundation relating to that contributor.

3. As used in this section, "university foundation" means a nonprofit corporation, association or institution or a charitable organization that is:

(a) Organized and operated exclusively for the purpose of supporting a university or a community college;

(b) Formed pursuant to the laws of this State; and

(c) Exempt from taxation pursuant to 26 U.S.C. § 501(c)(3).

Sec. 12. Notwithstanding the amendatory provisions of section 7 of this act, if a person proves to the satisfaction of a county recorder that he in good faith remitted a tax imposed by chapter 375



1 of NRS before July 1, 2005, in reliance upon written advice
2 provided by an opinion of the district attorney, the county recorder
3 may not require the taxpayer to pay any delinquent taxes, penalties
4 or interest relating to that remittance if the county recorder
5 determines after the completion of a subsequent audit that the taxes
6 the taxpayer remitted were deficient.

7 **Sec. 13.** This act becomes effective on July 1, 2005.



