

**PROPOSED REGULATION OF THE
NEVADA TAX COMMISSION**

LCB File No. R104-10

June 15, 2010

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

AUTHORITY: §§1-9 and 11, NRS 375.015; §10, NRS 375.015 and 375.330.

Section 1. Chapter 375 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *“Appurtenance” means that which belongs to something else; an adjunct; an appendage; something annexed to another thing more worthy as principal, and which passes as incident to it, as a right of way or other easement to land; an out-house, barn, garden, or orchard, to a house or message; an article adapted to the use of the property to which it is connected, and which was intended to be a permanent accession to the freehold, such as a right to water.*

Sec. 3. *“Common element” has the meaning ascribed to it in NRS 361.233(3)(b).*

Sec. 4. *“Common interest community” has the meaning ascribed to it in NRS 361.233(3)(c).*

Sec. 5. *“Dealer” has the meaning ascribed to it in NRS 116.033.*

Sec. 6. *“Declarant” has the meaning ascribed to it in NRS 116.035.*

Sec. 7. *“Developmental Rights” has the meaning ascribed to it in NRS 116.039*

Sec. 8. *“Lineal Consanguinity” means ascending and descending blood relations within one degree of separation; and ascending and descending relations resulting from marriage also within the first degree of separation. This phrase captures the following relationships:*

a) Natural parent and natural child

b) Adoptive parent and adopted child

c) Stepparent and stepchild

d) Parent-in-law and child-in-law

e) Spouses and Registered Domestic Partners

Sec. 9. *“Nominal consideration” means a consideration for the transfer of title to real property bearing no relation to the current market or actual value of the real property.*

Sec. 10. *“Trust” is an instrument created in accordance with the requirements of NRS 163 for the purpose of holding real or personal property by one party for the benefit of another.*

Sec. 11. 1. *If the declaration of value reflects nominal consideration or states no value, except for property claimed to be exempt from the transfer tax, the recorder shall estimate the fair market value of the real property in accordance with NRS 375.010(2).*

2. To ensure a uniform method for determining whether the reported purchase price represents nominal consideration, the recorder may perform a test by comparing the total cash equivalent purchase price for real property reported by the taxpayer, plus either:

(a) the amount of debt assumed; or

(b) the amount of debt forgiven to the seller if the sale is a short sale and the amount must be reported as income to the Internal Revenue Service;

↳ to the total taxable value of the property placed on the tax rolls of the county, as adjusted for any partial interest being transferred. If the total purchase price plus any amounts in subsection (2)(a) or (b) divided by the total taxable value estimated by the county assessor and published as of January 1 of the current calendar year, as adjusted for any partial interest being transferred, results in an amount of thirty percent (30%) of the total taxable value of the property or less, then the purchase price reported by the taxpayer shall be presumed to be

nominal consideration for purposes of NRS 375.010(1)(e)(2) unless overturned pursuant to subsection 6. The test does not apply to any transfer consisting solely of water or timber rights, agricultural or open-space use designated real property, mining use designated property, or property of an interstate or inter-county nature as defined in NRS 361.032 which is valued by the Department of Taxation.

3. For agricultural or open-space use designated real property subject to the transfer, the recorder may request an opinion of the estimated fair market value of the real property from the county assessor. The county assessor shall respond within 2 days, and base his opinion on the sales file of similarly situated properties maintained by him and appropriately adjusted for any differences. The recorder may then use the calculation provided in subparagraph 2 of this section, using the assessor's opinion of the estimated fair market value, to determine whether the stated purchase price represents nominal consideration.

4. For mining use designated real property, any value representing the underlying mineral must first be deducted from the purchase price. The purchase price remaining after the deduction for the value of the underlying mineral, may then be compared to the sum of the taxable land value estimated by the assessor plus the taxable improvement value estimated by the Department of Taxation. The recorder may then use the calculation provided in subparagraph 2 of this section, using the purchase price as adjusted and the combined taxable land and improvement value, to determine whether the adjusted purchase price represents nominal consideration.

5. For properties of an interstate or inter-county nature which are assessed by the Department of Taxation, the recorder may request an estimate from the Department as to what portion of the taxable value estimated pursuant to NRS 361.320 represents real property. The

recorder may then use the test in subparagraph 2 of this section, as adjusted to represent the real property only, to determine whether the stated purchase price represents nominal consideration.

6. If the purchase price is presumed to represent nominal consideration as a result of the test performed in subsection 2, the taxpayer may submit evidence to rebut the presumption the purchase price represents nominal consideration. The evidence must be sufficient to show that the purchase price is the fair market value of the property as defined in NRS 375.010(2), and may include, but is not limited to, an appraisal or certified market analysis performed by a licensed appraiser.

Sec. 12. 1. If the property transferred is:

(a) A common element conveyed to or from a common-interest community; and

(b) the value represents nominal consideration or there is no stated consideration,

↳ the estimated fair market value must be established by reference to the requirements of NRS 375.010(2) and this regulation.

2. If the assessor's taxable value of the common element is assessed to individual community units, the portion of the taxable value of each community unit representing the common element must be added together to determine the total taxable value of the common element.

3. If a dealer or declarant transfers the legal title in a common element to the common-interest community, the recorder may consider whether the transfer is exempt pursuant to NRS 375.090(3) if the beneficial interest in the common element was previously conveyed to individual community unit owners and if the dealer or declarant has not reserved development

rights. Examples of documentation which show the beneficial interest in a common element was previously transferred include:

(a) Unit owners' purchase agreements showing the purchase included the subject common area; and

(b) the declaration as defined in NRS 116.037.

4. Any portion of the common elements for which the dealer or declarant has reserved development rights as defined in NRS 116.039 and which have been subsequently transferred are subject to the transfer taxes imposed pursuant to NRS 375.020, NRS 375.023, and NRS 375.026.

Sec. 13. 1. *The value of property acquired in a strict foreclosure action or by voluntary conveyance in lieu of foreclosure will be the sum of:*

(a) The outstanding principal sum owed to the acquiring party plus

(b) Amounts paid by the acquiring party to others to discharge their interests in the property, plus

(c) Liens and encumbrances assumed by the acquiring party, plus

(d) Amounts paid to the mortgagors by the acquiring party to acquire title.

2. *The calculation only applies to deeds which specify the transfer is performed to relieve the burden of debt.*

Sec. 14. *The person requesting any exemption pursuant to NRS 375.090 has the burden of establishing to the satisfaction of the Recorder the applicability of any exemption referred to in these regulations.*

Sec. 15. *For purposes of NRS 375.090(1), 1. A transfer made without consideration for the sole purpose of confirming an entity's existing real estate ownership following a mere change in identity, form or place of organization, of the entity is not taxable if:*

(a) The entity holds title to the real estate at the time of the change in identity, form or place of organization, as opposed to its owners. An entity does not hold title to real estate if the entity's owners have merely made a capital contribution of the real estate to the entity without the conveyance of title to the real estate;

(b) Without the making of any document:

(i) The entity is vested with all the same property, real, personal and mixed, franchises and debts before and after the change in identity, form or place of organization;

(ii) The entity is subject to all the same obligations before and after the change in identity, form or place of organization;

(iii) Liens upon the property of the entity before the change in identity, form or place of organization are not impaired by the change in identity, form or place of organization; and

(iv) Any claim existing or action or proceeding pending by or against the entity before the change in identity, form or place of organization may be prosecuted to judgment against the entity after the change in identity, form or place of organization.

(c) The entity is not required to wind up its affairs or pay its liabilities and distribute its assets either because there is no break in the continuity of its existence or because its separate existence ceases with the change in identity, form or place of organization;

(d) Title to real estate would not revert or be in any way impaired by reason of the change in identity, form or place of organization;

(e) There is no change in proportionate ownership interests resulting from the change in identity, form or place of organization, considering all the ownership interests in the entity prior to the change in identity, form or place of organization. When determining if there is a change in proportionate ownership interests, entities will not be considered to be entities

separate from their members, partners, stockholders or shareholders; and when determining if there is a change in proportionate ownership interests resulting from the change to a limited partnership, the interests of the limited partners and general partners will both be considered; and

(f) The business entity after the change in identity, form or place of organization continues to engage in the same business activities of the business entity before the change in identity, form or place of organization.

2. The taxpayer requesting the exemption must provide copies of documents for review by the recorder, sufficient to show:

(a) The organization of the business entities before and after the change in identity, form or place of organization, including each owner and the percentage of ownership; and

(b) Continuity of business purpose.

3. Signed and acknowledged documents, as appropriate, which may fulfill the requirements of subparagraphs 1 and 2 include:

(a) Articles of incorporation;

(b) Partnership agreements;

(c) Operating agreements;

(d) Resolutions and minutes of the board of directors meetings;

(e) Minutes of shareholder meetings;

(f) A plan of reorganization adopted by each of the business entity parties thereto; and the adoption must be shown by the acts of its duly constituted responsible officers, and appear upon the official records of the corporation. The evidence must clearly show that the

transaction was the result of a preconceived plan that existed at the time the transaction was undertaken; OR

↳ similar documents .

4. An affidavit signed by a representative of the business entity transferring the property to another business entity must be attached to the Declaration of Value. The affidavit must include:

(a) A statement that the transfer is eligible for exemption from the real estate transfer tax, pursuant to NRS 375.090(1);

(b) A statement the business entity is in compliance with the requirements of subsections 1 and 2 of this regulation;

(c) A description of the type of change, such as change in identity (one LLC to another LLC), change in form (from an LLC to a corporation; from a general partnership to a limited partnership), or change in place (from a California corporation to a Nevada corporation); and

(d) A statement that the transfer does not constitute a sale of assets or affairs which would be taxable.

5. As used in this section, “Continuity of business purpose” means that in an acquisition of one firm by another, the acquiring firm must carry on the acquired firm's usual business, or must employ a significant proportion of the acquired firm’s assets in the combined-business for the acquisition to qualify as a tax-exempt transaction.

6. For purposes of NRS 375.090(1), a business entity may include, but is not limited to, corporations, partnerships, limited liability companies, and sole proprietorships.

7. The Recorder will administer this section in the broadest legal manner to impose a tax when a transaction involving a transfer of a business entity is structured to avoid the payment of the taxes, consistent with NRS 375.018(4)(b).

8. Examples.

Example 1. A and B are equal partners in a general partnership known as AB, general partnership. One of the assets of the partnership is real estate that A and B contributed to the partnership but own in their individual names. A and B want to convert their general partnership to a limited partnership known as AB, LP. A and B set up a limited liability company (LLC) to be the 1% general partner in the limited partnership. A and B will have a 99% limited partnership interest in the limited partnership (that is, A and B each have a 49.5% limited partnership interest). In order to effectuate the conversion, A and B merge AB into AB, LP. The limited partnership is the surviving entity of the merger. The general partnership ceases to exist as a result of the merger.

By way of the merger, AB has changed its business organization form, or converted, from a general partnership to a limited partnership. AB, LP continues the same business as AB and has all the same assets and liabilities as AB. Further, ownership of the business has not changed. A and B were equal owners of AB and are equal owners of AB, LP through their equal ownership of the LLC and their equal limited partnership interests in AB, LP.

After the conversion, A and B prepare a deed for the real estate from A and B, individually, and AB, general partnership, as grantors to AB, LP as grantee. The deed is taxable because the real estate was in the name of A and B individually. Legal title was never transferred to the general partnership. Therefore, the deed effectuates a transfer of title in the real estate from A and B, individually, to AB, LP. AB, general partnership is merely joining in the deed. A document that transfers title to real estate from individuals to an entity is taxable.

Example 2. Assume the same facts as in Example 1 except that AB purchased the real estate with partnership funds and titled the real estate in the name of AB. Because the general

partnership holds title to the real estate and because the deed merely confirms AB's existing ownership of the real estate following its conversion to AB, LP, the deed is not taxable.

Example 3. Assume the same facts as in Example 2, except that instead of setting up a limited liability company (LLC) to be the general partner of AB, LP, A becomes the general partner and B becomes the limited partner. Each holds a 50% interest in the partnership's income. Although A and B each have an equal income interest, A now has sole control over the limited partnership as its general partner and B has only an income interest as a limited partner. In the general partnership, A and B had equal management and income interests. Because there is a change in ownership interests, AB, LP is a different entity than AB. Therefore, the deed is taxable.

Sec. 16. *1. For purposes of NRS 375.090(2), the exemption cannot be claimed when real property is transferred from a political subdivision.*

2. The Department shall provide the county recorders a list of typical political subdivisions found in the State of Nevada. A county recorder may request the Department to research whether an entity is a political subdivision eligible for the exemption pursuant to NRS 375.090(2).

3. The Department shall determine whether an entity is an instrumentality or political subdivision of the state of Nevada by reference to the requirements of NRS 354.474.

4. The Department shall determine whether an entity is an instrumentality or political subdivision or other entity from another state based on whether it is organized in a similar manner as a political subdivision or entity is organized in Nevada.

5. The Department shall determine whether an entity is a federal instrumentality or political subdivision. In the case of a transfer to a federal agency, a federal agency is not subject to the transfer tax if:

a) The activities of the organization are within the authority of its enabling legislation, as enacted by Congress;

b) The organization is not engaged in commercial activity for the private profit of its owners or members (other than the United States);

c) The federal government holds all, or substantially all, of the ownership of the organization;

d) The federal government, or its appointees, directly controls the activities of the organization;

e) The federal government contributes significant financial aid to the organization, either at the inception of the organization or as it operates; and

f) Congress intended the organization to be immune from taxation.

6. Documents which are sufficient to support the claim for exemption include, but are not limited to, political subdivision lists or the Property Tax Rates for Nevada Local Governments, also known as the “Redbook,” published by the Department. Entities not specifically included in the Redbook or lists prepared by the Department must otherwise meet the criteria listed subparagraphs 2 through 4 of this regulation.

Sec. 17. 1. *A transfer made without consideration for the sole purpose of recognizing the true status of ownership of the real property, is exempt if:*

(a) The grantee of the deed confirming true status held or holds record title to the property interest described in the deed of confirmation under a prior deed;

(b) The deed confirming true status is made solely for the purpose of making the grantee's record legal title under the prior deed sure and unavoidable; and

(c) The grantor of the deed confirming true status has no interest in the real estate conveyed or the grantor received his interest by a document that was void from inception.

2. Examples of transfers made without consideration for the sole purpose of recognizing the true status of ownership of the real property include, without limitation, the following special cases, if they meet the requirements of subparagraph 1:

(a) a transfer that only asserts a transfer of title to real estate by operation of law as a result of an existing survivorship interest;

(b) any curative water rights deed, whether conveying only water rights or together with the land to which it is appurtenant, dated prior to 1995;

(c) Transfers of water rights if the water right deed is to clarify a chain of title previously recorded in a county or filed with the state engineer, whether or not the water right is conveyed with or severed from the land to which it is appurtenant. The water right deed must be supported by a deed previously recorded in a county or filed with the state engineer. If no supporting deed specifically including water rights or all appurtenances can be presented to the recorder at the time of recording, the transfer is taxable at the rate then in effect;

(d) Change in marital status;

(e) Corrections in a previously-recorded document;

(f) Change in vesting as joint-tenant or tenants-in-common;

(g) Name change or name correction;

(h) Subdivision of property or division of a large parcel, as long as the owner(s) and the percentage of ownership remain the same;

(i) Completion of the terms of the contract for sale and title has vested in the equitable owner, if the tax was paid on the original recorded contract of sale;

(j) Conveyance from an agent to the agents principal, including a 1031 exchange for transfer of real property, limited to the period of 180 days after the first transfer if paid on the first deed; or

(k) Merger or consolidation.

3. For purposes of NRS 375.090(3), documents which are sufficient to support the claim for exemption must include the originally recorded vesting deed which is used to compare to the true status claimed on the subject document, and may also include, without limitation, any of the following, depending on the nature of the transaction:

(a) Contracts of sale and a showing that the tax has been paid;

(b) Land exchange agreements, qualified intermediary agreements, and contracts written to effect 26 USC § 1031 and a showing the tax was paid on the first deed;

(c) Agency agreements between an agent and his principal;

(d) Business entity merger documents;

(e) Marriage licenses or registered domestic partnership certificates;

(f) Purchase agreement showing the intended grantee or property in the case of transferring correcting a previously recorded document where there is a change in the grantee or property; and

(g) Deed or other transfer documents that have been previously recorded in a county or filed with the State Engineer for transfer of water rights that have been verified that the tax was paid at that time.

Sec. 18. *1. If the real property transfer tax has been assessed and collected on a transfer by a deed that was inadvertently recorded prior to the close of escrow, the taxpayer may request a refund within 20 business days of the date the tax was paid.*

2. A request for refund must be accompanied by the following documents:

(a) A deed to be recorded transferring the property back to the original property owner;

(b) A declaration of value accompanying the corrective deed claiming the corrective deed is subject to exemption pursuant to NRS 375.090(3), and at least one of the following:

(1) An affidavit from the title company or other agent to the transaction that the terms of sale have not been completed and that it was not the intent of the parties to convey the property prior to the completion of the terms of sale;

(2) A copy of the purchase and sales agreement, if any, with any amendments thereto, for the transfer; or

(3) A copy of the closing document, if any, providing complete details of the amounts due to and from the transferee and the transferor of the real estate, and

(4) Any other documentation to prove a refund is owed to the party requesting the refund.

3. An affidavit submitted by a title company or other agent pursuant to subsection 2 must be supported by a signed original letter from the party who paid the tax confirming the sale was not consummated. The title company may request an additional five business days to submit the confirmation letter supporting the affidavit.

4. A county recorder shall process the request for refund within 30 days of receipt of the information required in subparagraph 2.

5. This section does not apply to any other type of recording error.

Sec. 19. 1. *For purposes of NRS 375.090(4), the exemption can only be claimed for transfers among existing joint tenants or tenants-in-common. Transfers to new joint tenants or tenants-in-common may not be claimed for exemption.*

2. Documents which are sufficient to support the claim for exemption include, at a minimum, the originally recorded vesting deed which is used to compare to the joint tenants or tenants-in-common listed on the subject document.

Sec. 20. *1. For purposes of NRS 375.090(5), the “owner of the property” and “the person to whom it is conveyed” must be natural persons. Property in the name of a trust or business entity cannot be conveyed to a grantee who is not a natural person within the first degree of lineal consanguinity or affinity and qualify for this exemption.*

2. If the deed does not indicate the relationship, documents which are sufficient to support the claim for exemption include, without limitation:

(a) Marriage licenses for transfers between spouses;

(b) Birth certificates for transfers between parents and children;

(c) Adjudicated adoption papers for transfers between adopted children and their adoptive parents;

(d) Marriage licenses and birth certificates for transfers between stepchildren and stepparents and for transfers between parents-in-law and children-in-law;

(e) Certificates of Registered Domestic Partnership for transfers between domestic partners as that term is defined in Statutes of Nevada (2009) (SB 283);

↳If the parties to the transaction are personally known to the recorder, documentation may not be required. The recorder must note on the declaration that the parties are personally known to the recorder or his designee.

Sec. 21. *For purposes of NRS 375.090(6), documents which are sufficient to support the claim for exemption must include at least one of the following:*

(a) Adjudicated divorce decrees signed by the court;

(b) Adjudicated property settlement agreements.

Sec. 22. For purposes of NRS 375.090(7), documents which are sufficient to support the claim for exemption must include, without limitation, a copy of the document creating the trust or a certificate of trust in the manner required by NRS 164.400 and 164.410.

Sec. 23. For purposes of NRS 375.090(8), documents which are sufficient to support the claim for exemption include, without limitation:

(a) Bureau of Land Management mineral title plats (MT plats) which indicate the mining claim has not been patented; and

(b) Previously recorded unpatented mining claim documents.

Sec. 24. 1. For purposes of determining eligibility for exemption pursuant to NRS 375.090(9),

(a) The grantor(s) must own 100% of the grantee.

(b) Transfers from a corporation or other business organization to an individual are not eligible for the exemption.

(c) Equitable or beneficial ownership of both the grantor and the grantee does not qualify the transfer for exemption.

2. Examples of qualifying transfers of title in which the grantor(s) own 100% of the grantee include, without limitation:

(a) Transfers from an individual to corporations or other business organizations owned 100% by the individual (grantor)

(b) Transfers from a LLC Grantor to another LLC Grantee which is 100% owned by the Grantor LLC.

3. For purposes of NRS 375.090(9), documents which are sufficient to support the claim for exemption include documents showing the organization of the grantee, including each owner and the percentage of ownership, to confirm that 100% of the grantee is owned by the grantor. Examples of documents include, without limitation:

(a) U.S. income tax returns as appropriate to the type of organization of the grantee;

(b) Operating Agreements for the grantee, if applicable;

(c) Articles of Incorporation for the grantee, if applicable;

(d) Corporation Bylaws or Stock Agreements for the grantee, if applicable.

↪ Each document submitted for review must be signed and acknowledged, as appropriate.

Sec. 25. For purposes of NRS 375.090(10), real property transfer taxes are due upon recording a Death of Grantor affidavit and death certificate pursuant to the requirements of NRS 111.109(8).

Sec. 26. For purposes of NRS 375.090(11), documents which are sufficient to support the claim for exemption include a bankruptcy court order showing the bankruptcy case number and presiding judges signature, and requiring conveyance of the subject property.

Sec. 27. For purposes of NRS 375.090(13), documents which are sufficient to support the claim for exemption include, without limitation:

(a) Articles of Incorporation of the Nevada foundation, including a statement of the purpose of the foundation; and

(b) A letter of determination from the Internal Revenue Service granting exemption from taxation pursuant to 26 U.S.C. § 501(c)(3).

Sec. 28. For purposes of NRS 375.090(14), documents which are sufficient to support the claim for exemption include, without limitation:

(a) Articles of Incorporation of the foundation, including a statement of the purpose of the foundation; and

(b) A letter of determination from the Internal Revenue Service granting exemption from taxation pursuant to 26 U.S.C. § 501(c)(3).

Sec. 29. *Pursuant to NRS 375.320, any person who has paid the tax and is aggrieved by a decision of the county recorder may appeal the decision by filing a notice of appeal. The appeal form must be developed by the department and must be approved by the Nevada Tax Commission.*

Sec. 30. *1. The Department may publish a Real Property Transfer Tax Manual which may include, without limitation:*

a.) A glossary of real estate terms describing interests in land and used in NRS Chapter 375;

b.) A compilation of current and applicable published court decisions and attorney general opinions regarding the imposition of the real property transfer tax; and

c.) Examples of the methods and standards regarding the collection and administration of the tax provided in NAC Chapter 375.

Sec. 31. **NAC 375.030 is hereby amended to read as follows**

“Consideration” means that which is regarded as the equivalent or return given or suffered by one for the act or promise of another. It means the price paid for the real property transferred. The consideration can be in the form of money, or in the form of other things of value, *such as, but not limited to, the assumption of a liability or mortgage;* or a combination of both.

Sec. 32. **NAC 375.150 is hereby amended to read as follows:**

The following examples are given to illustrate methods of determining value or the tax base on which to compute any tax imposed by chapter 375 of NRS. *The calculation must be consistent with the requirements of NRS 375.010(2).*

1. “A,” the owner of a residence, sold the residence for \$250,000. The tax is based on \$250,000, the amount paid for the property.

2. “A,” the owner of certain real estate, sold it to “B” for \$144,000. “B” paid the amount of \$25,000 in cash, leaving a balance of \$119,000, and “A” gave “B” a deed to the property. The tax is computed on \$144,000, the amount paid or to be paid.

3. The holder of a trust deed in the amount of \$120,000 foreclosed upon the property securing the deed. At the foreclosure *or trustees’* sale, because of taxes and additional expenses incurred, the trustee bid \$122,500, and a trustee’s deed was issued ~~to the beneficiary. The beneficiary then accepted a mortgage in the amount of \$125,000 as consideration for the retransfer of the property to the former owner.~~ The tax on the trustee’s deed should be computed on the amount bid for the property *plus outstanding loans if the liability is assumed and* any costs, in this example \$122,500. ~~[The deed from the beneficiary to the former owner of the property is a conveyance of realty sold, and the tax should be computed upon the amount paid, namely \$125,000.]~~

4. For a full purchase price of \$500,000, “A” conveys to “B” land on which there is an encumbrance of \$410,000 at the time of sale. “A” signs a contract agreeing to pay off the encumbrance at a later date. The deed of conveyance from “A” to “B” is subject to tax on the full purchase price of \$500,000. The fact that the seller retained a contractual obligation on the property does not diminish the amount that “B” will pay, \$500,000 *for the realty transferred.*

5. “A,” the owner of certain real estate, sold it to “B” for a consideration of \$240,000. “B” paid the amount of \$125,000 in cash, leaving a balance due of \$115,000. “A” accepted bonds of the Home Owners’ Loan Corporation for the balance of \$115,000 and gave “B” a deed to the property. The tax is based on the total purchase price of \$240,000, ~~[the \$125,000 in cash and the \$115,000 value of the bonds].~~

6. Two corporations that do not have identical *common* ownership *or a direct parent/subsidiary ownership* exchange properties ~~[worth]~~ *with an estimated fair market value of* \$450,000 each. Each transfer is taxable on the \$450,000 value. ~~[Each corporation is receiving something of value in exchange for the property it is transferring.]~~

~~[7. To qualify for a loan to refinance their home, a married couple adds the husband’s parents to the title, with the married couple and the husband’s parents all as joint tenants. The value of the property is \$145,000. Because the transfer to the husband’s parents from the wife is not exempt from the tax and the joint tenants each have a right to the whole property, the transfer is taxable on the \$145,000 value.]~~

~~[8.]~~ 7. A couple buys a home from the Veteran’s Administration for ~~[\$97,142.36]~~ *\$250,000*. The transfer is taxable on the amount of purchase, ~~[\$97,142.36]~~ *\$250,000*.

~~[9.]~~ 8. A university foundation receives property valued at \$1,000,000. The transfer is exempt from taxation pursuant to subsection ~~[15]~~ *14* of NRS 375.090. The university foundation sells the property to another party in a transaction that is not exempt pursuant to NRS 375.090 for \$750,000. The second transfer is taxable on the amount of purchase, \$750,000.

~~[10.]~~ 9. A corporation owns property valued at ~~[\$180,000]~~ *\$1,000,000, which represents fair market value*. To refinance the property, the corporation transfers the property to one of its

shareholders pursuant to the requirements of the lender. The transfer is taxable on the value of the property, ~~[\$180,000]~~ \$1,000,000.

~~[11.]~~ 10. “A” owns property worth ~~[\$50,000]~~ \$250,000. “B” owns property worth ~~[\$75,000]~~ \$275,000. “A” and “B” form a limited-liability company and are the only two members. “A” and “B” transfer their properties to the limited-liability company. Each transfer is taxable for the value of the properties, ~~[\$50,000]~~ \$250,000 and ~~[\$75,000]~~ \$275,000, respectively.

~~[12.]~~ 11. “A” and “B,” who are not married *or do not have a registered domestic partnership*, and *are* not related within the first degree of consanguinity *or affinity*, own two identical properties, each worth ~~[\$50,000]~~ \$200,000, as joint tenants. “A” and “B” wish to transfer their interest in each property to the other so that “A” owns one property as the sole owner and “B” owns the other property as the sole owner. Because “A” and “B” are giving up their respective rights in the other parcel, the transfers are made with consideration and thus each transfer is taxable for the ~~[\$50,000]~~ \$200,000 value. If “A” and “B” held title to each property in 50 percent fractional interests, each transfer would be taxable for ~~[\$25,000]~~ \$100,000.

~~[13.] “A” and “B” are joint tenants of a 10-acre parcel that is worth \$150,000. “A” and “B” are not married and are not related within the first degree of consanguinity or affinity. They wish to partition the property with each receiving a 5-acre parcel in his own name. The transfer of each 5-acre parcel is taxable at a \$75,000 value. If they each owned a 50 percent fractional interest in the parcel, the transfer of each 5-acre parcel would be exempt from taxation, but if 6 acres were transferred to “A” and 4 acres were transferred to “B,” the transfer to “A” would be taxed on the value of 1 acre, \$15,000.]~~

~~[14.]~~ 12. A partnership owns real property worth ~~[\$100,000]~~ \$350,000. There is a mortgage on the property, and the partnership wishes to refinance the mortgage. As a condition of

refinancing, the lender requires the property to be held in title by only one partner. The transfer from the partnership to the single partner is taxable on the entire ~~[\$100,000]~~ \$350,000 value. Once the refinancing is complete, any transfer of title back to the partnership is also taxable on the entire ~~[\$100,000]~~ \$350,000 value.

~~[H5.]~~ 13. “A” and “B” own adjoining lots. “A” agrees to buy part of “B’s” lot for \$1,500,000. To expedite the mapping requirements, “B” transfers 100 percent of his lot to “A,” but retains a contractual obligation from “A” that after all mapping and adjustments to the legal description of the lot are complete, “A” will transfer back to “B” the property outside the purchased area. The first transfer is taxable on the \$1,500,000 amount. Because the second transfer is made without stated consideration, the transfer back to “B” of the excess area is taxable based on the fair market value of that area *calculated in accordance with NRS 375.010*.

14. Deeds given by persons such as masters in chancery, sheriffs and clerks of court for realty sold under foreclosure or execution. The tax is computed on the amount bid for the property plus the costs if paid by the purchaser, whether the purchaser is the mortgagee, judgment creditor or any other person.

Sec. 33. NAC 375.160 is hereby amended to read as follows:

The following are examples of transfers or conveyances subject to any tax imposed by chapter 375 of NRS:

1. A conveyance of realty in exchange for other property and the conveyance of the other property **if** it is realty.

2. ~~[A conveyance of realty in consideration of life maintenance. The tax is computed on the net value of the realty conveyed.]~~

~~—3. Deeds given by persons such as masters in chancery, sheriffs and clerks of court for realty sold under foreclosure or execution. The tax is computed on the amount bid for the property plus the costs if paid by the purchaser, whether the purchaser is the mortgagee, judgment creditor or any other person.]~~

~~[4.]~~ A conveyance of realty by a judgment or decree in a condemnation proceeding under the power of eminent domain or a conveyance of property under threat of imminence of the proceeding.

~~[—5. Conveyances to or by building and loan associations except that the tax does not apply to a conveyance of realty to a building and loan association for the purpose of securing a loan thereon, nor to the reconveyance of the realty to its owner as part of the loan transaction.]~~

~~[6]~~ 3. A conveyance of realty to a corporation in exchange for shares of its capital stock, *unless it is otherwise exempt pursuant to NRS 375.090.*

~~[7]~~ 4. A conveyance of realty by a corporation in liquidation or in dissolution ~~[to its shareholders subject to the debts of the corporation except that if there are no corporate debts and the conveyance is made solely for the cancellation and retirement of the capital stock, the tax does not apply].~~ *unless it is otherwise exempt pursuant to NRS 375.090.*

~~[8]~~ 5. Deeds to standing timber, patented mines and water rights *transferred separately from the appurtenances and tenements transferred with the land.*

~~[9]~~ 6. A transfer by which a contract ~~[for deed]~~ *of sale* is recorded which sets forth the purchase price, legal description, the buyer and the seller and which provides that the buyer has received custody of the real property and a deed will be delivered to the buyer when he fulfills his contractual obligations. If only a memorandum of such a contract is recorded, the transfer is also taxable.

7. Transfers from one business entity to another through intervening entities without identical common ownership or direct parent subsidiary ownership.

8. Transfers of water rights that are being or have been severed from the realty to which it is currently attached and does not meet the criteria for exemption under NRS 375 and Section 10 of these regulations.

Sec. 34. NAC 375.170 is hereby amended to read as follows:

~~[In addition to the exemptions provided by NRS 375.090, t]~~ The following are examples of transfers or conveyances which are not subject to any tax imposed by chapter 375 of NRS *or qualify for exemption pursuant to NRS 375.090:*

- ~~1. [The reconveyance of realty, conveyed to secure a debt, upon payment of the debt.~~
- ~~—2. A deed to or by a trustee not pursuant to a sale.~~
- ~~—3].~~ A deed to confirm title already *delivered to, accepted, and* vested in the grantee, such as a quitclaim deed to correct a flaw in title. *Title may not pass to another person or entity.*

~~[4]~~ 2. A deed given by an executor in accordance with the terms of the will, except that, if, by reason of a consideration passing between the devisees, one of them takes a greater share in the realty than that to which he is entitled under the will, the deed given by the executor to convey the greater share is subject to a tax computed upon the amount of the consideration *calculated on the estimated fair market value of the excess share transferred, unless the transfer falls under another exemption.*

~~[5]~~ 3. A deed from an agent to his principal conveying real estate purchased for and with money of the principal. A valid agency agreement must exist between the agency and his principal. No money may be supplied by the agent.

~~[6]~~ 4. An option or contingent agreement for the purchase of real property ~~[or a contract for the sale of real property]~~, if the *option* contract *or agreement* does not vest legal title until a future event occurs.

~~[7]~~ 5. Partition deeds, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying a greater share computed upon the consideration for the excess *estimated fair market value*. If, however, the parties hold title as joint tenants or tenants in common, the tax is applicable, unless another exemption applies.

~~[8]~~ 6. Ordinary leases of real property for any term of years. If the lease is for life or in perpetuity, or if the lease is terminable at the option of the lessee only, the tax is applicable.

~~[9. A deed executed by a debtor conveying property to a trustee for the benefit of his creditors except that when the trustee conveys the property to a creditor or sells it to any other person, the conveyance executed by him is taxable.~~

~~10.]~~ 7. Conveyance to a receiver of realty included in the receivership assets *by a plan of reorganization adopted in an equity receivership proceeding involving a corporation*, and reconveyance of the realty upon the termination of the receivership, *including reconveyances from the Federal Deposit Insurance Corporation (FDIC)*.

~~[11. A deed conveying real estate situated in a foreign country.]~~

~~[12.]~~ 8. Transfer of real estate in a statutory merger consolidation from a constituent corporation to the continuing or new corporation.

~~[13. Distribution of interests in real property owned by a corporation as part of the liquidation of a corporation to the shareholders of the corporation in percentages equal to their ownership in~~

~~the corporation. To receive title to his interest in the property, each shareholder must redeem his stock.]~~

~~[H4.]~~ **9.** Transfer of title in real property to a trustee in a bankruptcy proceeding pursuant to a written plan of reorganization approved by the bankruptcy court.

~~[H5.]~~ **10.** Transfer of real property from “A” to “A’s” trust, without consideration. ~~["A" is trustor of the trust.~~

~~—16. Transfer of real property from “A” to “A’s” trust, without consideration. “B” is grantor on the deed and is the legal representative of “A,” the trustor of the trust.~~

~~—17. Real property is owned by “A” as trustee of the “A” Family Trust. “A” is also trustor of that trust. “A” transfers the real property to “C,” “A’s” son any entity, without consideration.~~

~~—18.]~~ **11.** A purchase agreement that is recorded which sets forth the purchase price, legal description, buyer and seller of the property, but which also provides that the transaction is not complete until the seller obtains a zoning change and the buyer has not yet received a present interest in the property.

Sec. 35. NAC 375.180 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 3, if a deed evidencing a transfer of title of real property is offered for recording to a county recorder, the county recorder shall require a declaration of value to be made, on a form prescribed by the Nevada Tax Commission, and personally signed under penalty of perjury by ~~[the]~~ *at least one* grantee *or* ~~[the]~~ grantor ~~[or]~~ *and* the agent of the grantee ~~[or]~~ *and* grantor *if the agent is acting in compliance with an agency agreement*. The declaration of value:

(a) Must contain, without limitation:

(1) The name ~~[and]~~, mailing address *and phone number* of ~~the at least one~~ grantor *and the at least one* grantee and *the name, address, and telephone number of the* business or natural person requesting the recording if the grantor or grantee does not request the recording;

(2) ~~[A description of the use of the property]~~; *The date of sale;*

(3) *The date of the deed;*

(4) *The percentage of ownership transferred;*

(5) *Whether the transfer is between related parties;*

(6) *Whether the conveyance divides a current parcel of land;*

(7) *The property type on the date of sale;*

(8) *Whether the property use is intended to change;*

(9) *The type of deed used to convey the property;*

(10) *The type of transfer; and*

(11) *Information concerning the possible penalties and interest that may be imposed pursuant to NRS 375.030;*

(b) *If no claim for exemption from the tax is made, must contain, without limitation:*

(1) *The current taxable value;*

(2) *The amount of a mortgage assumed in the transaction, if any,*

(3) *The total purchase price for real property only, including any liabilities assumed.*

Any amount paid for non-real property must not be included in the total purchase price; and

(4) *Verification that the reported purchase price does not include any value attributable to non-real property.*

~~[(3) The full amount paid or to be paid for the property; and~~

~~— (4) Information concerning the possible penalties and interest that may be imposed pursuant to NRS 375.030;]~~

(c) May contain information regarding a claim for an exemption from the tax, including, without limitation:

(1) The type of exemption claimed, *if any*;

(2) A statement explaining ~~[the reason for the claim]~~ *how the transaction qualifies for the exemption;*

(3) *A list of documents presented to support the claim of exemption, if any; and*

(4) *A statement whether consideration was given for the transfer.*

~~[(3) A statement indicating whether or not the exemption is being applied to a partial interest in the property; and~~

~~— (4) The sales price of the property, if that information is available.]~~

(d) *May be supplemented with attachments which list, as necessary:*

(1) *Additional assessor parcel numbers subject to the transaction; and*

(2) *Supporting documents submitted for review to support a claim of exemption;*

2. The county recorder shall not accept an incomplete form except:

(a) If the transfer of title of real property is exempt from a tax imposed by chapter 375 of NRS, no value for the property need be declared on the form.

(b) If multiple parcels of real property are being transferred, at least one parcel must be listed on the form. If additional space is needed to list all the parcels of real property being transferred, the words “see attached” must be written next to the listed parcel number and an attachment that lists the number of each parcel being transferred must accompany the form.

~~{3. If the value of the property is stated incorrectly on the declaration of value or the amount of tax is computed incorrectly, the person who pays an amount of tax which exceeds the amount due may make a claim for a refund of the amount of tax which he overpaid by completing a refund request form, which may be obtained from the office of the county recorder of the county in which the tax is paid. The form must be signed under penalty of perjury by the person entitled to the refund or his legal representative and submitted to the county recorder of the county in which the tax is paid. If the claim is unaudited, the claim must be submitted within 6 months after the date of recording pursuant to NRS 244.250. If the claim for a refund is submitted pursuant to an audit, the claim may be submitted within 3 years after the date of recording.}~~

3. The county recorder or his designee shall review the information contained in the declaration of value form and shall note on the form any documents reviewed which substantiate any claim for exemption. The county recorder or his designee may list the documents reviewed in the designated area on the face of the form, or may use the following code:

a) Birth Certificate will be designated by “1”;

b) Marriage License or Certificate of Registered Domestic Partnership will be designated by “2”;

c) Articles of Incorporation will be designated by “3”;

d) Partnership Agreement will be designated by “4”;

e) Operating Agreement will be designated by “5”;

f) Department of Taxation entity information or research will be designated by “6”;

g) Contract of Sale will be designated by “7”;

h) Agency (Agent/Principal) Agreement will be designated by “8”;

- i) Merger documents will be designated by “9”;*
- j) Last will and testament will be designated by “10”;*
- k) Court Order will be designated by “11”;*
- j) Original vesting deed will be designated by “12”;*
- k) Adjudicated adoption papers will be designated by “13”;*
- l) Adjudicated divorce decree will be designated by “14”;*
- m) Adjudicated Property Settlement Agreement will be designated by “15”;*
- n) Trust document or certificate of trust will be designated by “16”;*
- o) Settlement Statements will be designated by “17”;*
- p) MT Plat or Patent records will be designated by “18”;*
- q) U.S. Corporation Income Tax Returns will be designated by “19”;*
- r) Corporation By-laws will be designated by “20”;*
- s) Stock Agreements will be designated by “21”;*
- t) IRS 501(c)(3) Determination will be designated by “22”;*
- u) Qualified Intermediary Agreement 1031 Exchange papers will be designated by “23”;*
- v) Land exchange agreement will be designated by “24”;*
- w) Business entity affidavit will be designated by “25”;*
- x) Trust affidavit will be designated by “26”; and*
- y) Other Document will be designated by “27”*

4. The recorder or his designee shall initialize the declaration of value to indicate who reviewed the declaration of value and supporting documentation, if any.

Sec. 36. NAC 375.200 is hereby amended to read as follows:

1. If the property transferred is located in more than one county and the value *reported on the declaration of value form is based on nominal consideration or* has not been determined by the buyer and the seller as *to the value to be reported in* each county, the value must be established by ~~applying the ratio of the assessed valuation in each county to the total assessed valuation of all the property.]~~ *using the estimated fair market value of each parcel in each county pursuant to NRS 375.010 and these regulations.*

~~[2. A person seeking a refund of any tax imposed by chapter 375 of NRS for property located in more than one county must submit a request for refund to the county recorder in each county in which the property is located on the form prescribed by the county recorder in each county.]~~

~~[3. Refunds must be made pursuant to the same distribution formula under which the tax was initially paid.]~~

Sec. 37. NAC 375.210 is hereby amended to read as follows:

1. The provisions of NAC 375.180, 375.190 and 375.200 do not afford a person claiming a refund a right to a hearing conducted by a hearing officer appointed by a county pursuant to NRS 375.320.

2. A claim for a refund must be accompanied by:

(a) A statement setting forth the amount of the claim;

(b) A statement setting forth all grounds upon which the claim is based;

(c) All evidence the claimant relied upon in determining the claim, including affidavits of any witnesses; and

(d) Any other information and documentation requested by the county recorder.

3. If the value of the property is stated incorrectly on the declaration of value or the amount of tax is computed incorrectly, the person who pays an amount of tax which exceeds

the amount due may make a claim for a refund of the amount of tax which he overpaid by completing a refund request for. The form may be obtained from the office of the county recorder of the county in which the tax is paid. The form must be signed under penalty of perjury by the person entitled to the refund or his legal representative and submitted to the county recorder of the county in which the tax is paid. If the claim is unaudited, the claim must be submitted within 6 months after the date of recording pursuant to NRS 244.250. If the claim for a refund is submitted pursuant to an audit of the county recorder, the claim may be submitted within 3 years after the date of recording.

4. A person seeking a refund of any tax imposed by chapter 375 of NRS for property located in more than one county must submit a request for refund to the county recorder in each county in which the property is located on the form prescribed by the county recorder in each county.

5. Refunds must be made pursuant to the same distribution formula under which the tax was initially paid.

~~[3]~~6. If a person files a claim for a refund in a contested case, all contested cases involved in the case shall be deemed to have been raised in the claim.

Sec. 38. NAC 375.320 is hereby amended to read as follows:

1. In any hearing, a hearing officer appointed by a county pursuant to NRS 375.320 may order briefs filed within such time as he allows, *but not less than 60 calendar days preceding the hearing date.*

2. Briefs must be filed with the hearing officer and be accompanied by an ~~acknowledgment or an~~ affidavit *with receipt thereof from all parties* showing service *and acceptance* on all other parties of record *a minimum of 20 calendar days before the hearing date.*

Sec. 39. NAC 375.330 is hereby amended to read as follows:

1. After the hearing of a contested case, a hearing officer appointed by a county pursuant to NRS 375.320 shall prepare findings of fact, conclusions of law and his final decision on the issues presented in the hearing.
2. The hearing officer shall service a copy of his findings of fact, conclusions of law and decision upon all the parties of record within 60 *calendar* days after the date of the hearing.
3. The decision of the hearing officer is a final decision for the purposes of judicial review.

Sec. 40. NAC 375.400 is hereby amended to read as follows:

1. The Department will periodically prepare reports regarding the collection and administration of taxes imposed by chapter 375 of NRS.
2. ~~[Except as otherwise provided in this section, each]~~ *Each* county recorder shall submit to the Department monthly reports regarding the collection and administration of taxes imposed by chapter 375 of NRS in his county. The reports must include:
 - (a) The total number of deeds evidencing a transfer of title to real property that were subject to the taxes imposed by chapter 375 of NRS for the immediately preceding month;
 - (b) The total amount of taxes collected for the immediately preceding month;
 - (c) The total number of exemptions granted for the immediately preceding month listed by the types of exemptions granted; and
 - (d) Such other information as may be useful in coordinating the collection and administration of the taxes imposed by chapter 375 of NRS.

~~[—3. A county recorder is not required to report information required by paragraph (c) of subsection 2 if the system used by the county to collect, process, distribute and store information~~

~~relating to the collection of the taxes imposed by chapter 375 of NRS cannot provide the required information.]~~

~~[4]~~ 3. Each county recorder shall submit to the Department a copy of any documentation that is submitted to the State Controller by the county concerning the amount of the proceeds of the tax imposed by NRS 375.020 that is required to be transmitted to the State Controller pursuant to NRS 375.070.

Sec. 41. NAC 375.410 is hereby amended to read as follows:

The Department may examine the records of each county to determine whether the county is complying with statutory and regulatory requirements governing the calculation, collection and distribution of the tax imposed by NRS 375.023. In conducting such examinations, the Department will:

1. Review a sample of the deeds presented to the county recorder for recordation to verify that the amount of tax collected was proper and whether the basis of the tax was reported correctly and exemptions were properly allowed.
2. Verify that the collection allowance authorized to be deducted and withheld from the taxes collected is properly calculated.
3. Verify that required reports are submitted in a timely manner.
4. Verify that all amounts collected are transmitted to the proper authority in a timely manner.

~~[—5. Verify that proper procedures are being followed for recording certificates of delinquency, releasing liens and administering requests for the correction of assessments].~~

Sec. 42. NAC 375.440 is hereby amended to read as follows:

1. A county may, at the time any tax imposed by NRS 375.023 is collected, remit to the credit of the general fund of the county the collection allowance that the county is authorized to deduct and withhold by subsection 4 of that section.

2. The collection allowance is calculated by multiplying the amount authorized in NRS 375.023(1) by the percentage amount authorized in NRS 375.023(4).