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April 7, 2003

Real Property Transfer Tax Exemptions/Review for elimination

NRS 375

375.090 The Tax imposed by NRS 375.025 does not apply to:

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

Problem: Verifying that ownership is identical between the two entities. By eliminating the exemption it would prevent the misuse of the exemption and ease the administration of the transfer tax. Values would need to be estimated for these transfers using the statutory guidelines

[2.] 1. A transfer of title to the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof.

Exemption 2. Retain as is. Federal regulations override, we cannot tax going to a government agency.

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

Exemption 3. Retain as is but we need to address what the true status means. Example of problem: Adding the name of someone who supplied part of purchase funds. This is usually adding the name of someone who supplied part or all of the down payment, but could not qualify for a loan or be part of loan qualifying for the best rate or terms. How does this really qualify as showing the true status since they willingly waived such rights so the other person(s) could qualify for the financing? It usually does not require input form all the grantees, at the Title Company level, to be placed on title.

[4.] 3. A transfer of title with consideration from on joint tenant or tenant in common to one or more remaining joint tenants.[or tenants in common.]

Exemption 4. Problematical as it is written. The removal of a joint tenant (without consideration) would reflect the basis of what a joint tenant is, each entitled to the whole. It would be better if we were to eliminate to tenants in common designation, as ownership rights are unknown.

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

Exemption 5. The elimination of this exemption would certainly reduce the number of spouses releases (exemption 6) for financing purposes and then the adding of those spouses back to title once the financing (or refinancing) is complete. This is another of those choices made to get better rates. On the bad side it would make estate planning problematical since the spouse might not be on title as a joint tenant. Exemptions number 6 & 7, the new number 4 may cover this situation.

[6.] 4. A transfer of title between spouses, including gifts, *or to effect a property settlement agreement or between former spouses in complacence with a decree of divorce.*

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

Exemptions 6 and 7. The wording makes good sense.

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

- a) The trustor of the trust;
- b) The trustor's legal representative; or
- c) A person related to the trustor in the first degree of consanguinity.]

Exemption 8. The elimination of this exemption would reduce the confusion about relationships. It will, of course, create additional taxes at the cost of individuals doing estate planning. Not all taxpayers have the benefits of a trusts and those that are certainly receive other savings by having their property in trusts at the time of their death.

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

Exemption 9. Remember these are unpatented claims and values would be based on sales only. The mining industry may be depressed, but this is such a tiny part (in value) of the real mining industry. Revisit and consider the elimination of this exemption.

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

corporation or organization to which the conveyance is made.]

Exemption 10. A transfer to an entity is intended to separate the individual(s) from the property. Eliminating this exemption would just reflect that separation.

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

Exemption 11. It is unclear why we would retain this exemption and expand it to include children's spouses when we are seeking to eliminate the exemption to add a grantor's own spouse.

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

- a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C. 101ET SEQ.;
- b) Approved in an equity receivership proceeding involving a railroad, as defined in the Bankruptcy Act: or
- c) Approved in an equity receivership proceeding involving a corporation, as defined in the Bankruptcy Act, if the making, delivery or filing of instruments of transfer or conveyance occurs within 5 year after the date of confirmation, approval or change.]

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

- a) The order of the Securities and Exchange Commission is 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.]

Exemptions 12 and 13. It would be nice to eliminate these exemptions, however federal laws might require us to look more closely. It would seem that no transfers would be going to the bankrupt or under SEC orders, therefore sales would look to the buyer to pay. Perhaps addressing these issues in the Administrative Code would help.

[14. 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

15. 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.

16. A transfer, assignment or other conveyance of real property to a corporation sole form another corporation sole. As used in this subsection, "corporation sole" means a corporation which is organized pursuant to the provision of chapter 84 of NRS.]

Exemptions 14 and 15. Donors receive incredible Federal Income Tax breaks for these donations and the recipients are able to sell the property free from Federal Income Tax charges so paying the transfer tax should not deter donations.

Exemption 16. Since we tax the transfers from individuals to Churches (Corporations sole) and sales by Churches to individuals why do we extend an exemption to sales and transfers "between" Churches?