

ORDINANCE NO. 13

SERIES 2012

AN ORDINANCE AMENDING THE TOWN OF CRESTED BUTTE'S LAND TRANSFER EXCISE TAX CONTAINED IN SECTION 4-4-10 ET SEQ. OF THE CRESTED BUTTE MUNICIPAL CODE IN ORDER TO MAKE DEEDS IN LIEU OF FORECLOSURE AN EXEMPTION THERETO WHERE CERTAIN CONDITIONS ARE SATISFIED AND MAKING OTHER NON-TAX POLICY AMENDMENTS TO THE TAX

WHEREAS, the Town of Crested Butte, Colorado (the "Town") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado;

WHEREAS, the Crested Butte Municipal Code (the "Code") imposes a Land Transfer Excise Tax, codified at § 4-4-10 *et seq.* (the "RETT") on all transfers by deeds or other instruments of transfer by which lands or other interests in real property within Crested Butte are sold or otherwise transferred;

WHEREAS, the Code contains certain exemptions from the applicability of the RETT, and where the transferor or transferee seeks to establish that a given transfer is exempt from the RETT, such party must apply with the Town to establish that the subject transfer is so exempt;

WHEREAS, the Town staff has studied how other municipalities in Colorado with similar land transfer excise taxes address the applicability of the land transfer excise tax to foreclosure sales and transfers in lieu of foreclosure;

WHEREAS, based on such study, the Town staff has found that certain clarifications are required to the Code in order to exempt certain transfers from the applicability of the RETT in connection with foreclosure sales and transfers in lieu of foreclosure where certain requirements are satisfied;

WHEREAS, the Town staff has recommended to the Town Council that the Code be amended in order to exempt certain transfers from the applicability of the RETT in connection with foreclosure sales and transfers in lieu of foreclosure where certain requirements are satisfied;

WHEREAS, the Town Council finds that the Town's RETT is an important source of revenue to the Town; however, certain transfers in connection with foreclosure sales and transfers in lieu of foreclosure should be exempt from the applicability of the RETT where certain requirements are satisfied;

WHEREAS, the Town Council has determined that the below amendments to the Code represent non-policy changes to the application of the RETT and are, therefore, in the best interest of the health, safety and welfare of the residents and visitors of Crested Butte.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Amending Section 4-4-30. Section 4-4-30 of the Code is hereby amended by adding the following new defined terms thereto:

“Artifice or device includes, but is not limited to, (1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust, or other association or organization followed within three (3) years by an assignment of the controlling interest in such association or organization, or (2) such a transfer plus the intent to ultimately assign the controlling interest in such association or organization.

Deed In Lieu of Foreclosure means a conveyance by a property owner to a secured party or wholly owned subsidiary of the secured party of property which is the subject of a mortgage, deed of trust or other security instrument in consideration of the cancellation of all or part of the indebtedness secured by such security instrument or release of the debtor or guarantor from any personal liability on account of such indebtedness.”

Section 2. Amending Section 4-4-40. Section 4-4-40 of the Code is hereby deleted in its entirety and replaced with the following new section which shall read as follows:

“Section 4-4-40. Amount of Tax.

The amount of said tax payable in each class shall be as follows:

(1) Where there is no consideration or where the consideration is five hundred dollars (\$500.00) or less, no tax hereunder shall be payable. The mere statement on the face of the instrument of transfer that the consideration received in connection therewith is \$500.00 or less shall not be deemed adequate supporting evidence that the consideration in the subject transfer is \$500.00 or less.

(2) Where the consideration exceeds five hundred dollars (\$500.00), the tax payable shall be three percent (3%) of such consideration.”

Section 3. Amending Section 4-4-50. Section 4-4-50 of the Code is hereby deleted in its entirety and replaced with the following new section which shall read as follows:

“Section 4-4-50. Exemptions.

The tax imposed under the authority of this Article shall not apply to:

(1) Any document wherein the United States or any agency or instrumentality thereof, the State, any county, city and county municipality, district or other political subdivision of this State, is either the grantor or grantee.

(2) Any document transferring title to real property in consequence of a gift of such property, where no consideration other than love and affection or charitable donation is evidenced by the terms of the document of transfer.

(3) Any transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership in real property; however, if additional consideration or value is paid in connection with such partition or termination, the tax shall apply and be based upon such additional consideration.

(4) Transfers pursuant to a decree of separation or divorce except where the transfer is made to a third party.

(5) Any transfer of title or change of interest in real property by reason of death, will or decree of distribution.

(6) Any transfer made pursuant to business organization, reorganization, or restructuring including but not limited to mergers or consolidations of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock or ownership interest. The transfer of at least seventeen percent (17%) of the stock in a corporation or seventeen percent (17%) of any ownership interest in a business entity whose assets include real property within the Town shall not be included in this exemption, and such transfer shall be subject to imposition of the excise tax imposed under Section 4-4-10 above.

(7) Any transfer to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Act or in an equity receivership proceeding.

(8) Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds of titles; or granting easements, rights-of-way or licenses.

(9) Any decree or order of a court of record quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding.

(10) Any transfer granting or conveying title to cemetery lots.

(11) Any lease of any real property, or assignment or transfer of any interest in any such lease, provided that the terms and conditions of such lease do not constitute a de facto conveyance of the subject property. In the later event the land transfer tax shall be based upon the capitalization at five percent (5%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be

paid. When the average annual rental cannot be determined, or at the election of the Town Manager, the tax shall be based upon the assessed value of the property covered by the lease.

(12) Any mineral transfer or mineral royalty transfer.

(13) Any transfer to secure a debt or other obligation, or release of real property which is security for a debt or other obligation.

(14) Any executory contract for the sale of real property, of less than three (3) years' duration, under which the purchaser is entitled to or does take possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract.

(15) Any transfer under execution sale or foreclosure sale under a power of sale or court decree of lien foreclosure, sheriff's deed, public trustee deed or treasurer's deed; provided that such transfer shall be exempt only (a) if the grantee is the person holding the obligation or instrument upon which the proceeding is based, or the grantee is a junior lienholder or exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution, and (b) to the extent of the obligation to be satisfied at the execution or foreclosure sale and any obligations to prior lienholders paid from the sale. A purchaser at an execution or foreclosure sale who holds no security interest or redemption rights in the property, and who acquires title to the property upon expiration of all redemption periods is required to pay the tax.

(16) Any transfer by deed in lieu of foreclosure; provided that (a) the grantee is the person holding the obligation or instrument which is being cancelled, in whole or part, in exchange for the transfer, and (b) such transfer shall be exempt only to the extent of the amount of the obligation which is being canceled, in whole or in part, in exchange for the transfer.

(17) Any transfer that is made pursuant to a valid and legally enforceable contract entered into between the seller and purchaser prior to the effective date of the initial ordinance codified herein, and which transaction is completed on or before June 1, 1980."

Section 4. Amending Section 4-4-60. Section 4-4-60 of the Code is hereby deleted in its entirety and replaced with the following new section which shall read as follows:

"Section 4-4-60. Application for exemption; Artifice.

(a) In the event of any transfer that the grantor or grantee thereof desires to establish is exempt from the applicability of the tax, except where the instrument of transfer contains language clearly establishing that the transfer is exempt as determined by the Town Manager, the grantor or grantee thereunder shall apply for and obtain from the Town Manager a certificate of exemption, which shall be affixed to such document of transfer in advance of the recording thereof with the Gunnison County Clerk and Recorder. The certificate of exemption shall be in substantially the same form as found in Appendix O to this Code. Where no such certificate of exemption is given or the instrument of transfer does not otherwise contain language clearly

establishing that the transfer is exempt as determined by the Town Manager, the transfer shall be deemed non-exempt under this Article and subject to the tax.

(b) Notwithstanding Section 4-4-50 hereof, if an artifice or device is employed in connection with the transfer of real property, which term "artifice or device" shall constitute a transaction or transactions the substantial purpose of which is to evade the provisions of this Article and the imposition of the tax hereunder, then such transfer shall nevertheless be subject to the tax.

(c) Any person whose claim of exemption duly applied for under the provisions of this Section is denied by the Town Manager may immediately appeal to the Town Council for a determination of such exemption and such appeal shall be considered by the Town Council within thirty (30) days of receipt of the same. In the event of a determination by the Town Council favorable to the appellant, any tax previously deposited, or so much thereof as may be allowed by the Town Manager, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the Town Council within thirty (30) days of the receipt thereof, the decision will be deemed favorable to the appellant."

Section 5. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 6. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the effective date hereof.

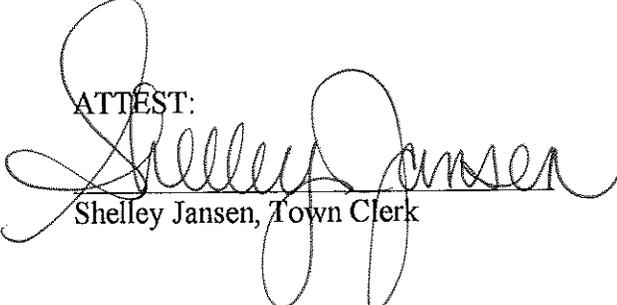
INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 17 DAY OF NOVEMBER, 2012.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 3RD DAY OF DECEMBER, 2012.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Aaron J. Huckstep, Mayor

ATTEST:


Shelley Jansen, Town Clerk

[SEAL]

