

Sec. 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 the 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 latter 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) a. 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; or deed in lieu of foreclosure; provided that such transfer shall be exempt only: (i) if the grantee is the person holding the obligation or instrument which is being cancelled, in whole or part, in exchange for the transfer or upon which the proceeding is based, as applicable, 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; (ii) if such grantee is the original obligation holder or a financial institution; and (iii) to the extent of the obligation which is being canceled, in whole or in part, in exchange for the transfer or is being satisfied at the execution or foreclosure sale and any obligations to prior lienholders paid from the sale.

b. Notwithstanding Subparagraph a. above, where the grantee is not the original obligation holder or a financial institution and where the other requirements of Subparagraph a. are otherwise met, such transfer may still qualify for an exemption from the tax pursuant to this Paragraph; provided that the transferee must, as market conditions allow, resell the property in order to satisfy the obligation within two (2) years of the transfer. If, however, the property is not sold within two (2) years of the transfer or within any extension of such time beyond two (2) years as the Town Manager may allow for good cause shown, then the transfer shall not be considered exempt pursuant to this Paragraph and shall be considered an artifice and taxable as provided for in this Chapter. Where the transfer is not otherwise exempt pursuant to Subparagraph a. above, the Town Manager shall place a lien or other form of security on the subject property, as approved by the Town Attorney, equal to the amount of tax that may be levied on the transfer at the time thereof.

c. 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.

d. For deeds in lieu of foreclosure transfers, in order to qualify for an exemption from the tax pursuant to this Paragraph, the obligation that is being cancelled must be in default at the time of the transfer and no additional consideration shall be exchanged between the transferor and transferee in connection with such transfer. The transferor and transferee shall provide to the Town Manager an affidavit approved by the Town Attorney certifying the existence of the default at the time of the transfer and that no additional consideration has or will be exchanged in connection with the transfer.

(16) 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. (Ord. 7 §2, 2013)

Sec. 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 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 nonexempt 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. (Ord. 13 §4, 2012)