

## ARTICLE 4

### Land Transfer Excise Tax

#### Sec. 4-4-10. Imposition of excise tax.

There is hereby imposed an excise tax on all transfers by deeds, instruments, writings, certain leases or any other documents by which any lands, tenements or other interests in real property located in the Town are sold, granted, assigned, transferred or otherwise conveyed to or vested in a purchaser thereof, or any person, except as may be specifically exempted by Section 4-4-50 of this Article. Said tax shall be due and payable as set forth in Section 4-4-100 of this Article. (Prior code 4-3-1; Ord. 4 §1, 2009)

#### Sec. 4-4-20. Persons liable for tax.

Any seller or person who transfers an interest in real property which is subject to the tax imposed under Section 4-4-10 above, and any purchaser or any other person to whom such a transfer is made, shall be jointly and severally liable for payment of the tax. (Prior code 4-3-2)

#### Sec. 4-4-30. Definitions.

The following words and phrases, as used in this Article, shall have the following meaning:

*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.

*Consideration* means and includes actual cash paid and/or value of the property delivered, or contracted to be paid or delivered, in return for the transfer of ownership or title to real property, and shall include the amount of any lien, mortgage, contract indebtedness or other encumbrance, either given to secure the purchase price or any part thereof, or remaining unpaid on the property at the time of the sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State or a municipal or quasi-government corporation or district for taxes, special benefits or improvements. In the event the transaction or transfer is by lease or similar agreement not specifically exempted in Section 4-4-50 below, *consideration* means the capitalization of ten percent (10%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, if any, other than rent, paid or to be paid.

*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 of such indebtedness.

*Financial institution* means, for purposes of this Chapter, an insured bank, commercial bank or trust company or credit union.

*Real property* means real property as defined by and under the laws of the State.

*Transfer* means and includes any grant or conveyance of the ownership of title to real property that is evidenced by any deed, conveyance, instrument or writing wherein or whereby title to real property situated in the Town is granted or conveyed, or the conveyance of a possessory interest and all other indicia of ownership in real property without the passing of legal title, subject to the exclusions provided in this Article. (Prior code 4-3-3; Ord. 4 §1, 2009; Ord. 13 §1, 2012; Ord. 7 §1, 2013)

**Sec. 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 five hundred dollars (\$500.00) or less shall not be deemed adequate supporting evidence that the consideration in the subject transfer is five hundred dollars (\$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. (Ord. 13 §2, 2012)

**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)

#### **Sec. 4-4-70. Lands affected.**

The tax imposed under the authority of this Article shall apply to all real property located within the Town not specifically exempted hereunder. When a transfer subject to the Article includes real property located within the Town, the tax imposed under the authority of this Article shall apply only to real property located within the Town, and said tax shall be assessed on that part of the consideration fairly attributable to that part of such real property located within the Town, as determined by the Town Manager. (Prior code 4-3-7)

**Sec. 4-4-80. Town Manager to enforce.**

(a) The Town Manager is charged with the enforcement of the provisions of this Article and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations to implement the intent and purposes of this Article.

(b) At the time of any transfer upon which a tax is imposed under authority of this Article, the person liable for said tax shall make a report to the Town Manager on forms prescribed by him or her, setting forth the true, complete and actual consideration for the transfer, the names and addresses of the parties thereto, the location of the real property transferred and such other information as may be required by the Town Manager.

(c) For the purposes of collection of the tax imposed under authority of this Article, all banks, title companies, escrow companies, building and loan institutions, attorneys, real estate agencies or other closing agents or agencies permitted as such to do business under the laws of the State may collect said tax and remit the same to the Town for and on behalf of the person liable for said tax.

(d) The Town Manager is hereby authorized to negotiate and enter into an intergovernmental contract with appropriate officials of the County for the collection of this tax, including the payment of a fee to the County for assisting in said collection. (Prior code 4-3-8; Ord. 4 §1, 2009)

**Sec. 4-4-90. Application of funds.**

(a) One-half ( $\frac{1}{2}$ ) of the proceeds received by the Town pursuant to this Article shall be deposited in the Ordinance No. 15, Series 1979 Tax Fund, created in Article 1 of this Chapter. This fund shall be subject to appropriation only for the capital improvement projects set forth in Paragraphs (1), (2) and (3) below as follows:

(1) Streets, alleys, parking areas and other public rights-of-way owned by the Town, including acquisition of real property related to this project category.

(2) Lower cost housing, including acquisition of real property and construction of improvements related to this project category.

(3) Parks and open space and community centers, including acquisition of real property and construction of improvements related to this project category.

In addition, the funds may be appropriated for the payment of principal and interest on bonds issued for one (1) or more of the capital improvement project categories established herein.

(b) One-half ( $\frac{1}{2}$ ) of the proceeds received by the Town pursuant to this Article shall be deposited in the Ordinance No. 12, Series 1991 Tax Fund, created in Article 1 of this Chapter. This fund shall be subject to appropriation only for those purposes set forth in Paragraphs (2), (3), (4) and (5) below to accomplish the preservation of open space and access outside the Town boundaries as they exist as of November 5, 1991, and financing activities relative thereto. In furtherance thereof, the Town Council may do the following:

(1) Deposit all or part of this fund into federally insured, interest-bearing accounts, or otherwise invest such funds as the Town Council deems appropriate.

(2) Purchase, lease, hold, have, use and take possession of interests in real property, obtain easements, including conservation easements, licenses in real property and first rights of refusal; and sell, lease, mortgage, deed in trust, alienate, subdivide, trade or dispose of the same.

(3) Administer and manage real property and easements and licenses therein for the benefit of the citizens of the Town.

(4) Designate such other entities as it deems appropriate to perform those functions set forth in Paragraphs (2) and (3) above, and appropriate funds for the administration of such entities.

In addition, the funds may be appropriated for the payment of principal and interest on bonds issued for the purposes set forth in Paragraphs (1) through (4) above. (Prior code 4-3-9; Ord. 12 §2, 1991; Ord. 4 §1, 2009)

**Sec. 4-4-100. Due dates, delinquencies, penalties, interest.**

(a) The tax imposed under the authority of this Article is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid within thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of twelve percent (12%) of the amount of tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. Interest shall accrue at the rate of one and one-half percent (1.5%) per month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall constitute part of the tax.

(b) No deed, instrument of conveyance or document of transfer shall be filed of record in the office of the County Clerk and Recorder or attempt made to so record the document until and unless said tax and all penalties and interest thereon have been paid in full. (Prior code 4-3-10)

**Sec. 4-4-110. Lien.**

(a) The amount of the tax imposed under Section 4-4-10 above, together with penalty and interest due thereon, is hereby assessed against the property transferred and, if not paid when due, shall constitute a lien on the property for the amount thereof, which lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.

(b) If the tax is unpaid and delinquent, the Town Manager shall give written notification to the seller and purchaser, at the address shown on the deed or instrument or his or her last known address, of said delinquency. Said notification shall be mailed by certified mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid in full within thirty (30) days of the effective date of notification, the Town Manager shall mark the same as delinquent on the Town's tax roll and shall certify such delinquency to the County Treasurer, pursuant to Sections 31-20-105 and 31-20-106, C.R.S., and the Board of County Commissioners, who shall extend such delinquencies upon the real property tax rolls of the County and collect the same in the manner set forth for real property taxes. Upon certification of the delinquent taxes, the penalties and interest thereon shall also become due and owing.

(c) The amount of the tax, penalty and interest imposed under the provisions of this Article shall be deemed a debt owed to the Town. Any person owing money to the Town under the provisions of this Article shall be liable in an action brought in the name of the Town for the recovery of the delinquent amount, plus the attorney's fees and other costs expended by the Town in such action.

(d) Any person who fails or refuses to pay any tax due hereunder may be punished by a fine not exceeding three hundred dollars (\$300.00) or imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.

(e) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. (Prior code 4-3-11; Ord. 4 §1, 2009; Ord. 8 §2, 2010)