Recordation Tax FAQ's

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Are UCC fixture filings subject to the indebtedness/mortgage tax imposed pursuant to Tenn. Code Ann. § 67-4-409(b)?

Generally, UCC fixture filings are subject to indebtedness tax. However, they are not subject to the tax if the incidence of tax is on an entity that is exempt from the tax or if a governmental entity is the mortgagor (lender) or the mortgagee (debtor). If the filer claims the document is exempt, the proper statute citation must be included on the document.

Do UCC fixture filings require a value stated as Maximum Principle Indebtedness?

Yes, UCC fixture filings always require a value to be stated as Maximum Principle Indebtedness. It cannot be $0.

What information is required on a modified or amended deed?

A modified conveyance deed or deed of trust should contain at least the book and page of the previous document to ensure that the proper tax was previously paid when originally filed

What is required when someone submits a document to be recorded and claims that the tax on the document has been paid in another jurisdiction?

The individual will need to provide the name of the jurisdiction where the tax was paid, along with the book and page where the document was recorded.

Is additional recordation tax due on an increase in indebtedness beyond the amount stated in a prior document?

Yes. Additional indebtedness tax is due on an increase in indebtedness, but only on the increase. The mortgagor should provide the book and page where the prior document was filed. Please note that the entire amount of the increase is subject to tax. A taxpayer cannot exclude the first $2,000 of the increase in indebtedness as it may do when paying the tax under the initial filing.

Is indebtedness tax due on an assumptions agreement?

There are two types of assumption agreements. The most common type is an arrangement where the purchaser promises to pay the debt of the seller, but the seller remains liable on the debt in the case of default. Indebtedness tax is not due on this type of assumption agreement, as there is no new debt, only a continuation of the existing debt.

The other type of assumption agreement is one whereby the purchaser enters into a new contract with the mortgagee, changing the terms of the mortgage and canceling the seller's obligation. Indebtedness tax is due on this type of assumption agreement, because a new indebtedness is created. Under this type of agreement, tax is due on the new mortgage.

Are municipalities or other government entities subject to recordation tax?

No. There is no recordation tax due on a transfer of property to or from a government entity or on any instrument evidencing an indebtedness in which a municipality is the holder or owner of the indebtedness. Government entities include government owned public utilities, farm credit services, or any political subdivision of the state, federal or local government.

Are state and federal credit unions subject to recordation tax?

Under Tenn. Code Ann. § 45-4-803, credit unions are exempt from recordation taxes if they are the grantee in a warranty deed or the grantor in a trust deed. See also 12 U.S.C. § 1768.

Is an oath required on a tax exempt transfer?

No. An oath is not required on a transfer tax exempt transfer.

Is transfer tax due on an adjustment of property between divorcing parties pursuant to a domestic settlement decree, domestic decree, and/or deed?

No. This type of transfer is exempt from transfer tax under the provisions of Tenn. Code Ann. § 67-4-409(a)(3)(D).

Is transfer tax due on the transfer of property pursuant to a last will and testament or other testamentary devise?

No. This type of transfer is exempt from transfer tax under the provisions of Tenn. Code Ann. § 67-4-409(a)(3)(D).

Is transfer tax due on transfers to a revocable living trust?

A transfer of property to a revocable living trust is subject to transfer tax unless:

- the transferor, spouse of the transferor, or trustee of the trust transfers the property back to the same transferor or transferor's spouse, or
- the deeds of transfer are executed by the trustee to implement a testamentary devise by the trustor of the trust.

Is transfer tax due on a release of a life estate?

No. This type of transfer is exempt from transfer tax under the provisions of Tenn. Code Ann. § 67-4-409(a)(3)(C).

Is transfer tax due on a conveyance from one spouse to the other spouse?

No. This type of transfer is exempt from transfer tax under the provisions of Tenn. Code Ann. § 67-4-409(a)(3)(A)(i).

Is transfer tax due on a division in kind by tenants in common?

No. This type of transfer is exempt from transfer tax under the provisions of Tenn. Code Ann. § 67-4-409(a)(3)(B).

What is the tax base for a quit claim deed?

The tax base for a "true" quit claim deed is the consideration given. However, tax is due on the fair market value of the property when the language in the document shows intent to convey the property itself, or gives warranty, rather than a mere chance of title. Examples of such language include, but are not limited to:

- "to have and to hold" (habendum clause)
- "in fee simple(absolute)"

What does the Department of Revenue consider the fair market value (FMV) of a property being transferred?

The Department would accept as the FMV of the property:

- the tax base that is listed in the local tax assessor's office, or
- a recent appraisal that has been accepted by the assessor's office when disputing the tax base.

Anything less is subject to audit by the Department and could be assessed, along with penalties and interest.

Who is responsible for paying and collecting the transfer tax?

The transfer tax is paid by the grantee or transferee of the interest in real estate, as shown on the instrument evidencing the transfer of such interest. It is collected by the register of the county in which the instrument is offered for recordation.

What is the tax base for the transfer of a freehold estate?

The tax base is the consideration given or the fair market value (FMV) of the property, whichever is greater, unless specifically exempt by law. Where a deed is presented at a much later date for recordation, the current FMV of the property should be used.

How should the recordation tax be calculated on a warranty deed that includes a retained life estate?

The recordation tax on the transfer of a warranty deed with a retained life estate is based on the fair market value (FMV) of the property less the value of the life estate. The preparer of the deed is responsible for calculating the value of the life estate. The valuation must reflect the fair market value of the property, life estate, and remainder interest.

There are two alternatives the preparer may use when calculating the value of the life estate.

Alternative 1

The preparer may use the tables referenced in Tenn. Comp. R. & Regs. 1320-4-9-.01 (1983), which have been reproduced as Table VIII-A and VIII-B in Tennessee Code Annotated Volume 13 (Supp. 2017).

Multiply the life estate factor that applies to the life estate holder by the FMV of the property being transferred to determine the life estate value. Once the value of the life estate has been determined, that amount should be subtracted from the FMV of the property. Recordation tax is owed on that amount. The preparer of the deed must show the calculation of the life estate when filing the deed.

Example:

In September 2018, a father, age 70, transfers property valued at $250,000 to his daughter, but he retains a life estate in the property.

Applicable interest rate per Table VIII-A is 6%

Life estate factor for a male aged 70 is .41294

FMV of property	$250,000
Life estate factor	x .41294
Life estate value	$ 103,235
FMV of property	$250,000
Life estate value	- 103,235
Recordation tax base	$146,765
Recordation tax rate	x .0037
Recordation tax due	**$ 543.03**

Alternative 2

The preparer may use the IRS Actuarial Computation Tables (select Section 1, Table S under Publication 1457). The actuarial factors used must be based on an interest rate that is equal to 120% of the midterm applicable federal rate for the month of valuation rounded to two-tenths of a percent (the applicable interest rate is provided at https://www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates).

Multiply the life estate factor that applies to the life estate holder by the FMV of the property being transferred to determine the life estate value. Once the value of the life estate has been determined, that amount should be subtracted from the FMV of the property. Recordation tax is owed on that amount. The preparer of the deed must show the calculation of the life estate when filing the deed.

Example:

In September 2018, a father, age 70, transfers property valued at $250,000 to his daughter, but he retains a life estate in the property.

Applicable interest rate for September 2018 is 3.4%

Life estate factor at the 3.4% interest rate for a person aged 70 is .35876

FMV of property	$250,000
Life estate factor	x .35876
Life estate value	$ 89,690
FMV of property	$250,000
Life estate value	- 89,690
Recordation tax base	$160,310
Recordation tax rate	x .0037
Recordation tax due	**$593.15**