

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

x yew ✓✓

April 5, 1968

To: Ernest H. Johnson, State Tax Assessor, Bureau of Taxation  
From: ~~John R.~~ Doyle, Assistant Attorney General " " "  
Subject: Real Estate Transfer Tax

SYLLABUS:

A DEED TRANSFERRING TITLE TO REAL PROPERTY WHICH IS ACKNOWLEDGED AND DELIVERED PRIOR TO MARCH 1, 1968, BUT NOT RECORDED UNTIL AFTER MARCH 1, 1968, IS NOT SUBJECT TO A REAL ESTATE TRANSFER TAX.

FACTS:

Chapter 712 of Title 36 of the Revised Statutes, as enacted by Section H of Chapter 154 of the Private and Special Laws of 1967, was repealed by Section 2 of Chapter 537 of the Public Laws of 1967. Chapter 537 of the Public Laws of 1967 takes effect on March 1, 1968; repeals the previous law and creates a new tax on real estate transfers.

QUESTIONS:

Whether a deed transferring title to real property which is acknowledged and delivered prior to March 1, 1968, but which is not recorded until after March 1, 1968, is:

- (a). subject to tax under Chapter 712 of Title 36 of the Revised Statutes as enacted by Section H of Chapter 154 of the Private and Special Laws of 1967; or
- (b) taxable under Chapter 712 of Title 36 of the Revised Statutes as enacted by Chapter 537 of the Public Laws of 1967; or
- (c) not subject to any real estate transfer tax.

ANSWER:

A deed transferring title to real property which is acknowledged and delivered prior to March 1, 1968, but not recorded until after March 1, 1968, is not subject to any real estate transfer tax.

LAW:

"There is imposed, on each deed, instrument or writing by

Ernest H. Johnson, State Tax Assessor  
Subject: Real Estate Transfer Tax  
Page two

April 5, 1968

which any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest on property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, exceeds \$100, a tax at the rate of 55¢ for each \$500 or fractional part thereof." Title 36 M.R.S.A. §4651 (P.L. 1967, C. 537, §1)

REASONS:

1. Whether a deed transferring title to real property which is acknowledged and delivered prior to March 1, 1968 but which is not recorded until after March 1, 1968, is subject to tax under Chapter 712, as enacted by P & S. L. 1967, Chapter 154.

Under the provisions of Chapter 154 a tax was imposed upon the transfer of title to real property. The tax was due at the time of recordation of the deed. At that time the register of deeds was to ascertain and compute the amount of tax due thereon and was to collect the tax as a prerequisite to the acceptance of the deed for recordation:

"When any deed is offered for recordation, the register of deeds shall ascertain and compute the amount of the tax due thereon and shall collect such amount as prerequisite to the acceptance of the deed for recordation.

The amount of tax shall be computed on consideration for the deed and shall be stamped by the register on the deed.

\*\*\*\*" (Title 36 M.R.S.A. §4643, P. & S.L. 1967, C. 154, §1).

The effective date of Chapter 154 was January 1, 1968. Specifically excluded from the operation of the tax act were deeds acknowledged or recorded prior to that date.

Chapter 537 became effective on March 1, 1968. Therefore, Chapter 154 was only effective for the period January 1, 1968 to March 1, 1968. As of March 1, 1968, Chapter 154 was repealed.

It follows that the authority of the registers of deeds to levy and collect the tax under the old law (Chapter 154) ceased as of March 1, 1968 when Chapter 537 of the Public Laws became effective.

Ernest H. Johnson, State Tax Assessor  
Subject: Real Estate Transfer Tax  
Page Three

April 5, 1968

Therefore, a deed acknowledged and delivered prior to March 1, 1968, but not recorded for example, until March 10, 1968, cannot be taxed under the provisions of Chapter 712 of Title 36 of the Revised Statutes as enacted by Section 4 of Chapter 154 of the Private and Special Laws of 1967, since the Registers of deeds no longer have authority to levy and collect that tax.

2. Whether a deed transferring title to real property which is acknowledged and delivered prior to March 1, 1968 but which is not recorded until after March 1, 1968 is taxable under Chapter 712 of Title 36 of the Revised Statutes as enacted by Chapter 537 of the Public Laws of 1967.

The legislative history of Chapter 537 furnishes help in its interpretation. It is to be kept in mind that as of January 1, 1968, the federal government abandoned its documentary stamp tax on conveyances of realty imposed under 26 U.S.C.A. §4361 et seq. Thereafter, the states were free to constitute their own systems of taxation of realty conveyances.

Originally, the second special session of the 103rd Legislature which enacted Chapter 537 was presented with a bill completely different from that passed in final form. The original bill (L.D. 1771) did not follow the previous federal provisions. It was extensive in new substantive provisions for the imposition of a tax on real estate transfers. Included within these substantive provisions was the requirement that a "declaration of value" be filed with an instrument presented for recording. This document was designed to be utilized by local assessors in valuing properties located within their municipalities since it was to be filed with the State Tax Assessor. The thrust of the original bill was twofold - to furnish an assessment device for the use of local assessors and to raise revenues.

However, the bill which ultimately passed (L.D. 1879) was an extensive redraft of the original bill. The bill went through two committee redrafts.

Section 4651 of Title 36, imposing the tax on real estate transfers, was adopted verbatim from the provisions of 26 U.S.C.A. §4361, the Federal Law abandoned on January 1, 1968.

Having in mind the clear intent of the Legislature it seems proper that we should follow the interpretation afforded the Federal Act by federal regulations.

Ernest H. Johnson, State Tax Assessor  
Subject: Real Estate Transfer Tax  
Page four

April 5, 1968

Section 43.4361-1(a)(2) of the Federal Tax Regulations, 1967, Vol. 2 (U. S. Code Congressional and Administrative News) provides:

"....the tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made ...."

"No stamp is required on an instrument made before the passage of the act imposing the tax...." 47 C.J.S. Internal Revenue, §545.

Too, the interpretation of the federal law by regulation is consistent with the general provisions of the Maine law relating to conveyances of realty. The tax on real estate transfers is levied on the sale of realty (Title 36 M.R.S.A. §4651).

Under the law of this State there is no sale of realty and no passage of title to realty until delivery of the deed.

"A deed, though duly executed, while under the dominion of the grantor, and before its delivery transfers no title. It takes effect from and by delivery, and not from its date." Egery vs. Woodard (1868) 56 Me. 45, see also Jackson vs. Sheldon, (1843) 22 Maine 569.

Therefore, since the tax is on the "sale" of real property the tax would attach after delivery of the instrument.

Therefore:

1. Deeds delivered on or after March 1, 1968 are taxable at the rate applicable under Chapter 537 of the Public Laws of 1967.
2. Deeds delivered prior to March 1, 1968 but not recorded until after March 1, 1968, because of the repeal of the real estate transfer tax provided by Chapter 154 of the Private and Special Laws of 1967, are not subject to any real estate transfer tax.

Ernest H. Johnson, State Tax Assessor  
Subject: Real Estate Transfer Tax  
Page five

April 5, 1968

It may be that determination of when a deed is delivered will cause some difficulty. Whether a deed is delivered depends upon the facts of each particular case. The general rule however, is that delivery is complete when a deed is delivered to the grantee with the consent of grantor and with the intent that the deed should operate as a divestment of title to the grantee. (Gatchell v. Gatchell (1928) 127 Maine 328.)

Since varying fact situations may or may not import delivery, any particular questions should be referred to us for review.

JRD:lpn