

MAINE STATE LEGISLATURE

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Cox
R. of S.

L.D. 249

(Filing No. S- 311)

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STATE OF MAINE
SENATE
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 95, L.D. 249, Bill, "An Act to Exempt Certain Real Estate Transfers from the Real Estate Transfer Tax"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 36 MRSA §4641, sub-§§1 and 3, as enacted by PL 1975, c. 572, §1, are amended to read:

1. **Consideration.** "Consideration" means the total price or amount paid, or required to be paid, for real property valued in money, whether received in money or otherwise and ~~shall include~~ includes the amount of any mortgages, liens or encumbrances thereon, regardless of whether the underlying indebtedness is assumed by the grantee.

3. **Value.** "Value" means the amount of the actual consideration therefor, except that in the case of a gift, or a contract or deed with nominal consideration or without stated consideration, "value" is to be based on the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Sec. 2. 36 MRSA §4641-A, as amended by PL 1985, c. 381, §1, is repealed and the following enacted in its place:

§4641-A. Rate of tax; liability for tax

There is imposed on each deed by which any real property in this state is transferred a tax at the rate of \$2.20 for each

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2 \$500 or fractional part thereof of the value of the property
3 transferred, the tax to be imposed 1/2 on the grantor and 1/2 on
4 the grantee.

5 **Sec. 3. 36 MRSA §4641-B, 3rd ¶**, as enacted by PL 1975, c. 572,
6 §1, is amended to read:

7 The amount of tax shall must be computed on the
8 ~~consideration for the deed~~ value of the property as set forth in
9 the ~~"declaration of value"~~ declaration of value prescribed by
10 section 4641-D.

11 **Sec. 4. 36 MRSA §4641-C**, as amended by PL 1985, c. 691, §32,
12 is further amended to read:

13 **§4641-C. Exemptions**

14 The following deeds shall ~~be~~ are exempt from the tax imposed
15 by this chapter:

16 1. **Deeds to government property.** Deeds to property
17 transferred to or by the United States, the State of Maine or any
18 of their instrumentalities, agencies or subdivisions;

19 2. **Mortgage deeds.** Mortgage deeds, discharges of mortgage
20 deeds and partial releases of mortgage deeds, deeds from a
21 mortgagor to a mortgagee in lieu of foreclosure and deeds from a
22 mortgagee to itself at a public sale held pursuant to Title 14,
23 section 6323. In the event of a deed to a 3rd party at such a
24 public sale, the tax imposed upon the grantor by section 4641-A
25 applies only to that portion of the proceeds of sale that exceeds
26 the sums required to satisfy in full the claims of the mortgagee
27 and all junior claimants originally made parties in interest in
28 the proceedings or having subsequently intervened in the
29 proceedings as established by the judgment of foreclosure and
30 sale. The tax must be deducted from the excess proceeds;

31 3. **Deeds affecting a previous deed.** Deeds which that,
32 without additional consideration, confirm, correct, modify or
33 supplement a deed previously recorded;

34 4. **Deeds between family members.** Deeds between husband and
35 wife, or parent and child, without actual consideration ~~therefor~~
36 for the deed, and deeds between spouses in divorce proceedings;

37 5. **Tax deeds.** Tax deeds;

38 6. **Deeds of partition.** Deeds of partition when the interest
39 conveyed is without consideration. However, if any of the
40 parties take shares greater in value than their undivided

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2 interest, a tax is due on the difference between their
3 proportional undivided interest and the greater value, computed
4 at the rate set forth in section 4641-A;

5 **7. Deeds pursuant to mergers.** Deeds made pursuant to
6 mergers of corporations from which no gain or loss is recognized
7 under the Internal Revenue Code;

8 **8. Deeds by subsidiary corporation.** Deeds made by a
9 subsidiary corporation to its parent corporation for no
10 consideration other than the cancellation or surrender of the
11 subsidiary's stock;

12 **9. Deeds prior to October 1, 1975.** Deeds dated or
13 acknowledged prior to October 1, 1975, and offered for recording
14 subsequent to that date; ;

15 **10. Deeds by parent corporation.** Deeds made by a parent
16 corporation to its subsidiary corporation for no consideration
17 other than shares of stock of the subsidiary corporation; and

18 **11. Deeds of distribution.** Deeds of distribution made
19 pursuant to Title 18-A; ;

20 **12. Deeds executed by public officials.** Deeds executed by
21 public officials in the performance of their official duties;

22 **13. Deeds of foreclosure and in lieu of foreclosure.** A
23 deed conveying real property back to a lender holding a bona fide
24 mortgage that is genuinely in default, either by a sheriff
25 conducting a foreclosure sale or by the mortgagor in lieu of
26 foreclosure;

27 **14. Deeds given pursuant to the United States Bankruptcy**
28 **Code.** Deeds given pursuant to the United States Bankruptcy Code;

29 **15. Deeds to a trustee, nominee or straw.** Any deeds:

30 A. To a trustee, nominee or straw party for the grantor as
31 beneficial owner;

32 B. For the beneficial ownership of a person other than the
33 grantor when, if that person were the grantee, no tax would
34 be imposed upon the conveyance pursuant to this chapter; or

35 C. From a trustee, nominee or straw party to the beneficial
36 owner; and

37 **16. Certain corporate and partnership deeds.** Deeds between
38 a family corporation, partnership or limited partnership and its

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2 stockholders or partners for the purpose of transferring real
3 property in the organization, dissolution or liquidation of the
4 corporation, partnership or limited partnership under the laws of
5 this State, provided that the deeds are given for no actual
6 consideration other than shares, interests or debt securities of
7 the corporation, partnership or limited partnership. For
8 purposes of this subsection a family corporation, partnership or
9 limited partnership is a corporation, partnership or limited
10 partnership in which the majority of the voting stock of the
11 corporation, or of the interests in the partnership or limited
12 partnership is held by and the majority of the stockholders or
13 partners are persons related to each other, including by
14 adoption, as descendants or as spouses of descendants of a common
15 ancestor who was also a transferor of the real property involved,
16 or persons acting in a fiduciary capacity for persons so related.

17 **Sec. 5. 36 MRSA §4641-D, first ¶,** as amended by PL 1991, c.
18 591, Pt. Y, §1 and affected by §3, is further amended to read:

19 Any deed, except as provided in this section, must, when
20 offered for recording, be accompanied by a statement or
21 declaration prepared in duplicate and signed, subject to the
22 penalties of perjury, by the parties to the transaction or their
23 authorized representatives, declaring the ~~consideration for~~ value
24 of the property transferred and indicating the taxpayer
25 identification numbers of the grantor and grantee. The statement
26 or declaration must include evidence of compliance with section
27 5250-A and reference to the appropriate tax map and parcel number
28 unless no tax map exists that includes that property, in which
29 event the declaration must indicate that no appropriate tax map
30 exists. The exceptions to the foregoing are the following:

31 **Sec. 6. 36 MRSA §4641-E,** as amended by PL 1977, c. 679, §32,
32 is further amended to read:

33 **§4641-E. Powers and duties of State Tax Assessor**

34 The State Tax Assessor is authorized to prescribe such rules
35 and regulations as ~~he may deem~~ are necessary to carry out the
36 purposes of this chapter.

37 Within ~~2~~ 3 years of the recording of a deed subject to the
38 tax imposed by this chapter, the State Tax Assessor may examine
39 any books, papers, records or memoranda of the grantor or grantee
40 bearing upon the amount of tax payable, and may enforce that
41 right of examination by subpoena ~~his right to such examination.~~
42 ~~If he shall determine~~ the assessor determines that there is a
43 deficiency of taxes due under this chapter, ~~he shall assess~~ such
44 deficiency must be assessed, together with interest and
45 penalties, ~~giving~~ with notice to the persons liable, but no such
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assessment ~~can~~ may be made more than 2 3 years after the date of recording.

Sec. 7. 36 MRSA §4641-K, as repealed and replaced by PL 1977, c. 696, §294, is amended to read:

§4641-K. Falsifying declaration of value

Any person who knowingly falsifies the ~~consideration--of~~ declaration of value prescribed by section 4641-D or refuses to permit the State Tax Assessor, or any of his the State Tax Assessor's agents or representatives to inspect that property, in question or any relevant books, papers, records or memoranda within 2 3 years after recording, or knowingly alters, cancels or obliterates any part thereof, or knowingly makes any false entry therein ~~shall-be~~ is guilty of a Class E crime.

FISCAL NOTE

This bill clarifies the taxable status of certain real estate transfers. It is estimated that increased tax collections for some transfers will offset decreased tax collections for certain other transfers that will now be exempt. The net fiscal impact on the real estate transfer tax will not be significant.

The additional costs to print and mail notification of these changes can be absorbed by the Bureau of Taxation utilizing existing budgeted resources.'

STATEMENT OF FACT

This amendment revises the real estate transfer tax to provide that the tax is based on the value of the property transferred. The amendment also provides explicit exemptions for several situations already treated as exempt by the Bureau of Taxation, creates some new classes of exemptions: one for deeds to a trustee, nominee or straw party, and one for deeds between a family corporation or partnership and its stockholders or partners; and extends the statute of limitations for audits from 2 years to 3 years.

This amendment also adds a fiscal note to the bill.

Reported by Senator Carey for the Committee on Taxation.
Reproduced and Distributed Pursuant to Senate Rule 12.
(6/8/93) (Filing NO. S-311)

COMMITTEE AMENDMENT