

701—109.2(428A) Taxable status of real estate transfers.

109.2(1) *Federal rules and regulations.* In factual situations not covered by these rules and involving those portions of Iowa law which are consistent with the former federal statutes (26 U.S.C.A. 4361) that imposed a real estate transfer tax, the department of revenue and county recorders shall follow the federal rules and regulations in administering the provisions of Iowa Code chapter 428A. (1968 O.A.G. 643)

109.2(2) *Transfer of realty to a corporation or partnership.* Capital stock, partnership shares and debt securities received in exchange for real property constitutes consideration which is subject to the real estate transfer tax. Where the value of the capital stock is definite or may be definitely determined in a dollar amount, the specific dollar amount is subject to the tax. Where the value of the capital stock is not definitely measurable in a dollar amount, the tax imposed is to be calculated on the fair market value of the realty transferred. For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21. (1976 O.A.G. 776)

Real estate transfer tax is not due when real property is conveyed to a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 in an incorporation or organization action where the only consideration is the issuance of capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. Actual consideration other than these shares or debt securities is subject to real estate transfer tax.

109.2(3) *Trades of real estate.* Real estate transfers involving the exchange of one piece of real property for another are transfers subject to the real estate transfer tax. Each grantor of the real estate is liable for the tax based on the fair market value of the property received in the trade as well as other consideration including but not limited to cash and assumption of debt. (1972 O.A.G. 654)

For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21.

109.2(4) *Conveyance to the United States government or the state of Iowa.* Any conveyance of real estate to the United States or any agency or instrumentality thereof or to the state of Iowa or any agency, instrumentality, or political subdivision thereof not exempt from the real estate transfer tax pursuant to Iowa Code section 428A.2, is subject to the real estate transfer tax. (1968 O.A.G. 579) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law (7 U.S.C.S. §1984).

109.2(5) *Conveyance of property on leased land.* The transfer of buildings or other structures located on leased land is subject to the real estate transfer tax. The fact that the person who owns a building or other structure does not own the land upon which the property is located does not exempt this type of conveyance from the real estate transfer tax. (1972 O.A.G. 318)

109.2(6) *Mortgage default.* In the factual situation where a defaulting mortgagor issues a deed or other conveyance instrument to the mortgagee as satisfaction of the mortgage debt, the transaction is subject to the real estate transfer tax. The consideration upon which the tax is calculated is the outstanding unsatisfied mortgage debt.

However, as an exception to this rule, a conveyance of real property to lienholders in lieu of forfeiture or foreclosure action is exempt from real estate transfer tax.

109.2(7) *Completion of contract.* A deed or other conveyance instrument given at the time of completion of a single real estate contract is subject to the real estate transfer tax. The tax is to be computed on the full amount of the purchase price as stated in the contract and not solely on the last installment payment made prior to the issuance of the deed or other conveyance instrument. If the original contract is assigned to a third party or parties prior to fulfillment of such contract, the tax is to be computed only on the original contract price upon completion of the contract.

When a single deed or other conveyance instrument is given at the time of completion of multiple successive real estate contracts, separate taxes are to be computed and paid based upon the full purchase price stated in each contract. For example, if A sells real estate to B on an installment contract, and then B sells the same property to C on another installment contract, and subsequently both A and B transfer their respective interests in the property to C via one deed, A is liable for a tax computed on the full purchase price stated in the original contract to which A was a party and B is liable for a tax computed on the full purchase price stated in the subsequent contract to which B was a party.

109.2(8) *Assignments of contract.* Assignments of real estate contracts by contract sellers and contract buyers are not subject to the real estate transfer tax. (1970 O.A.G. 605)

109.2(9) *Corporate and partnership dissolution.* A conveyance of realty by a corporation or partnership in liquidation or in dissolution to its shareholders or partners subject to the debts of the corporation or partnership is a conveyance subject to the real estate transfer tax. However, if there are no debts and the conveyance is made solely for the cancellation and retirement of the capital stock or dissolution, the tax does not apply.

Real estate transfer tax is not due when real property is conveyed from a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 to its shareholders, partners, or members in a dissolution action where the only consideration is capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, including the assumption of debts by the shareholders, partners, or members. Actual consideration other than these shares or debt securities is subject to the real estate transfer tax.

109.2(10) *Security instruments.* Any deed or instrument given exclusively to secure a loan or debt is not subject to the real estate transfer tax.

109.2(11) *Marriage dissolution exemption.* Marriage dissolution exemption from the real estate transfer tax provided in Iowa Code section 428A.2(16) applies only to real property conveyances between former spouses specifically mandated by a dissolution decree.

109.2(12) *Family debt cancellation exemption.* The family debt cancellation exemption from the real estate transfer tax provided in Iowa Code section 428A.2(11) applies only to real estate conveyances between husband and wife, or parent and child and indebtedness between these parties.

The amount of indebtedness subject to exemption shall not exceed the fair market value of the property being transferred.

EXAMPLE 1. A son is indebted to his father for \$10,000. The son transfers real property with a fair market value of \$12,000 to his father as satisfaction of the indebtedness. No real estate transfer tax is due in this situation.

EXAMPLE 2. A son is indebted to his father for \$10,000. The son transfers real property with a fair market value of \$4,000 to his father as satisfaction of the indebtedness. Real estate transfer tax is due on \$6,000 in this situation.

109.2(13) *Assumption of debt.* Any outstanding debt on the property conveyed that is not assumed by the grantee is not to be included as consideration in computing the amount of real estate transfer tax due.

EXAMPLE. Property with a mortgage of \$40,000 is transferred from A to B. B pays A \$60,000 but does not assume the \$40,000 mortgage. The real estate transfer tax is to be computed on the \$60,000 cash payment only. If B had assumed the mortgage in addition to making the cash payment, the real estate transfer tax would be computed on \$100,000 (the sum of the payment and mortgage).

109.2(14) *Mergers, consolidations, and reorganizations.* Conveyances of real estate resulting from corporate or limited liability company mergers, consolidations, or reorganizations are exempt from the real estate transfer tax. The following definitions are intended to be general guidelines in determining eligibility for exemption under this subsection.

“*Merger*” means the uniting of two or more corporations or companies into one corporation or company in such manner that the corporation or company resulting from the merger retains its existence and absorbs the other constituent corporation(s) or company(ies) which thereby lose its or their existence.

“*Consolidation*” means the uniting of two or more corporations or companies into a single new corporation or company, all of the constituent corporations or companies thereby ceasing to exist as separate entities.

“*Reorganization*” means the transfer of substantially all of the assets of one corporation or company to another corporation or company where the persons having an interest in the old corporation or company maintain substantially the same interest in the new corporation or company.

This rule is intended to implement Iowa Code section 428A.1 as amended by 1996 Iowa Acts, chapter 1167, and section 428A.2 as amended by 1996 Iowa Acts, chapter 1170.

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