

# Realty Transfer Tax



## Exclusions for Conservation-Related Transactions in Pennsylvania

*Many conservation-related property transactions are excluded from having to pay state and local realty transfer taxes in Pennsylvania.*

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## Summary

Sales of real estate and conveyances of certain other property interests are subject to state and local transfer tax in Pennsylvania unless the transaction is excluded from taxation by statute. The transfer tax statute excludes certain conservation-related transactions involving conservancies from taxation:

- transfers to a conservancy;
- transfers by a conservancy to a governmental entity; and
- transfers by a conservancy of land subject to an agricultural conservation easement, where the conservancy has owned the land for at least two years. (This covers situations where a conservancy wants to transfer land to a private party subject to conservation restrictions.)

The statute also excludes certain transactions involving conservation and public access easements from taxation:

- a transfer of an agricultural conservation easement under authority of the Agricultural Area Security Law;

- a transfer of a conservation easement or preservation easement under the Conservation and Preservation Easements Act; and
- a transfer of a perpetual historic preservation easement, a perpetual public trail easement or other perpetual public recreational use easement, a perpetual scenic preservation easement or a perpetual open-space preservation easement.

The transfer tax law provides exclusions for many other types of transactions, which may or may not involve conservation, for example:

- transfers to a government entity by gift, dedication, or deed in lieu of condemnation; and
- transfers to or by a land bank.

Where an exemption is claimed, the real estate document evidencing the transaction must be accompanied by a Realty Transfer Tax Statement of Value. Otherwise, the transfer tax generally is due at the time of recording of the document.

Note that the following exclusions don't go into effect until September 11, 2016:

- A transfer of an agricultural conservation easement to or from the Commonwealth, a county, a local government unit or a conservancy under authority of the Agricultural Area Security Law;
- A transfer of a conservation easement or preservation easement under the Conservation and Preservation Easements Act (If it's going to a conservancy, this is already excluded); and
- A transfer of a perpetual historic preservation easement, a perpetual public trail easement or other perpetual public recreational use easement, a perpetual scenic preservation easement or a perpetual open-space preservation easement to or from the United States, the Commonwealth, a county, a local government unit or a conservancy (Again, if it's going to a conservancy, this is already excluded).
- Transfers to or by a land bank.

## State realty transfer tax

Pennsylvania's Realty Transfer Tax Law (72 P.S. § 8101-C et seq.) and its accompanying regulations (61 Pa. Code § 91.1 et seq.) impose a **1% state realty transfer tax** on the value of real estate represented by a document presented for recording.<sup>1,2</sup> "Real estate" subject to transfer tax is defined to include land, buildings, structures, fixtures, mines, minerals, timber, and other improvements, but excludes "permanently attached machinery and equipment in an industrial plant."<sup>3</sup>

Types of transfers that are subject to the realty transfer tax include sales of real estate as well as life estates and leases that last for 30 years or more.<sup>4</sup> The term of the lease includes the initial term plus all renewal options unless the options are at fair market rent as negotiated at the time the option is to be exercised.<sup>5</sup>

The value of the real estate on which the transfer tax is based is generally the cash consideration paid in an arms length transaction.<sup>6,7</sup> When fair market value is not paid or there is no cash consideration—for instance where the taxable event is a gift, a foreclosure, or a deed in lieu—alternate methods for calculating value are used. In such instances, the taxable amount is the "computed value." This is calculated as the

<sup>1</sup> Article XI-C of the Pennsylvania Tax Reform Code of 1971, 72 P.S. § 8102-C.

<sup>2</sup> This rate is fixed by statute. Infrequently, there are efforts to increase the state's percentage. Governor Rendell's Transportation Funding and Reform Commission, for example, proposed (unsuccessfully) in its final report (2006) to raise the state's realty transfer tax from 1 to 1.9 percent to help fund Pennsylvania's mass transit systems.

<sup>3</sup> 72 P.S. § 8101-C.

<sup>4</sup> 72 P.S. § 8101-C.

<sup>5</sup> 72 P.S. § 8103-C.1; 61 Pa. Code § 91.193(b)(24)(v).

<sup>6</sup> 72 P.S. § 8101-C. This amount includes the value of liens and other encumbrances not removed prior to transfer. Assignments are addressed in 61 Pa. Code §§ 91.131 and 91.132(c).

<sup>7</sup> Department of Revenue regulations define a *bona fide sale* as a "transfer between a buyer, willing but not obligated to buy, and a seller, willing but not obligated to sell, each acting with adverse economic interests at arms-length in its own interest and with knowledge of the value of the real estate transferred." 61 Pa. Code § 91.131.

product of the assessed value of the property and a multiplier assigned to the county in which the property is located.<sup>8,9</sup>

## Local realty transfer tax

In addition to the state transfer tax, municipalities are permitted to impose **local realty transfer taxes**. Under Article XI-D of the Tax Reform Code of 1971, local jurisdictions are permitted to impose transfer tax upon transactions only "to the extent the transactions are subject to [the state transfer tax]."<sup>10</sup> Thus, **the exemp-**

<sup>8</sup> 61 Pa. Code § 91.131. For instance, if someone wanted to make a gift of real estate to a dear friend, the gift would incur transfer tax even though there was no "consideration" for the conveyance. The amount of the tax due would be the computed (also referred to as "imputed") fair market value of the parcel.

Assume for purposes of this example that the property's *assessed* value is \$160,000. If this gift happened immediately after a countywide assessment (so that all assessment figures were current), the imputed fair market value for purposes of calculating the transfer tax would be the property's county-assessed value. However, because most assessments are not current, and property values appreciate over time, the State Tax Equalization Board (established by the Dept. of Revenue) creates a "multiplier" to calculate the tax due. It does this by evaluating the sale of properties in each county to analyze how closely the sale prices match the assessed values. The comparison between the two numbers is called the common level ratio. For example: If properties with an assessed value of \$160,000 usually have a fair market value of \$200,000 in that county, the common level ratio would be .8 ( $\$160,000 \div \$200,000$ ). The "inverse" of that ratio creates the multiplier (i.e.,  $\$200,000 \div \$160,000 = 1.25$ ). To determine the imputed value of the gift property in the example above, the assessed value of the parcel would be multiplied by 1.25 ( $\$160,000 \times 1.25 = \$200,000$ ).

<sup>9</sup> In addition, if the transfer is of an interest that is "not determinable" by either actual consideration or computed value, the interest is assessed at its "actual monetary worth." 72 P.S. § 8101-C; 61 Pa. Code § 91.167.

<sup>10</sup> 72 P.S. § 8101-D. There is authorizing language in two places for local jurisdictions to impose realty transfer tax: the Tax Reform Code of 1971, *as amended* (72 P.S. § 8101-D)—which generally limits the power of local entities to levy transfer taxes to transactions that are subject to state transfer tax—and § 2(1) of the Local Tax Enabling Act (53 Pa.

**tions and exclusions from state transfer tax set forth in the state transfer tax law, Article XI-C of the Tax Reform Code, are applicable to local jurisdictions.**

Additionally, Article XI-D of the Tax Reform Code specifies that local transfer tax must conform to the **rate** specified by the Local Tax Enabling Act—which is **1% except for home rule municipalities**.<sup>11</sup> In non-home rule jurisdictions the combined state and local realty transfer tax therefore would be 2%. If the value of the property were \$100,000, for example, the transfer tax due would be  $.02 \times \$100,000 = \$2,000$ . **Home rule jurisdictions are authorized to impose a higher transfer tax.** For instance, as of the date of publication of this guide, the cities of Pittsburgh and Philadelphia have a local transfer tax rate of 3%. Reading and Scranton impose a local transfer tax rate higher than 1%, as do many other of the 71 home rule municipalities in the Commonwealth. Title companies and online sites can be helpful in providing current information about the local transfer tax rate.<sup>12</sup> Local transfer tax typically is shared (often but not always 50/50) between the municipality and the local school district.

Pennsylvania realty transfer tax is collected, often along with the local realty transfer tax, by the county's Recorder of Deeds, and the Commonwealth's share is

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C.S.A. § 6901*et seq.*)—which allows local governments “tax anything” powers. However, most experts believe that Act 40 of 2005 removed the ability of local taxing authorities to tax “classes or types of transactions” not subject to tax under state law. For a discussion of how the local transfer tax provisions of the Tax Reform Code intersect with previous transfer tax laws, see W. Kotzen, “2014 Pennsylvania and Philadelphia Realty Transfer Taxes,” *Realty Transfer Tax Update*, Pennsylvania Bar Institute (Sept. 2014), pp. 56-58.

<sup>11</sup> See 53 Pa. C.S.A. 6901 *et seq.* The Local Tax Enabling Act sets a 1% limit on the aggregate amount of local transfer tax that can be imposed. However, Home Rule Charter legislation generally exempts home rule municipalities from the Local Tax Enabling Act's tax rate limitations. See, e.g., <http://www.klgates.com/files/Publication/ca356a59-eedd-450b-be9a-97c70aec0585/Presentation/PublicationAttachment/5889f489-3ff4-4a94-8412-9b8eba567f74/rea1005.pdf>.

<sup>12</sup> For instance, see [http://www.anytimeestimate.com/PA\\_REAL\\_ESTATE\\_TAX/pa-transfer-tax.htm](http://www.anytimeestimate.com/PA_REAL_ESTATE_TAX/pa-transfer-tax.htm) for a listing of transfer tax rates (not guaranteed for accuracy).

sent to the Department of Revenue.<sup>13</sup> In the month of February 2015, the state collected almost \$25 million in realty transfer taxes.<sup>14,15</sup>

## Entities exempt from taxation

Transfer tax is the joint liability of the parties to the transaction (i.e., the buyer and the seller) unless one of the parties is **exempt pursuant to statute**. Exempt parties include the federal government, the Commonwealth, and any of their instrumentalities, agencies, or political subdivisions.<sup>16</sup> In the event of a transfer of real estate involving an exempt party, **the other party is responsible to pay 100% of the tax unless the parties agree otherwise**. Barring an exempt party, it is customary for the tax to be split equally by the buyer and seller (although this can be subject to negotiation in an agreement of sale).<sup>17</sup>

## Transfers excluded from taxation

### Conservation-related exclusions

State transfer tax law excludes certain enumerated conservation-related real estate transactions from taxation (72 P.S. § 8102-C.3(18)).<sup>18</sup> Quoting directly from the law, as amended through July 13, 2016 (by Act 84 of 2016), these excluded transactions are:

- (i) A transfer to a conservancy.

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<sup>13</sup> The government entities are authorized to file a lien on the property for unpaid transfer tax.

<sup>14</sup> <http://www.revenue.pa.gov/GeneralTaxInformation>

<sup>15</sup> Fifteen percent of the state transfer taxes collected are dedicated to the Keystone Recreation, Park and Conservation Fund. For additional information about the Keystone Fund, see <http://www.keystonefund.org>.

<sup>16</sup> 72 P.S. § 8102-C.2; 61 Pa. Code § 91.111.

<sup>17</sup> Because buyer and seller typically split this tax, where there is a transfer to a conservancy the transferor in effect receives a 1% tax savings. A conservancy may want to get the benefit of that savings by crediting the realty transfer tax otherwise due by seller against the purchase price. See [Model Grant of Purchase Option with Commentary](#) (edition of 6/30/14) at <http://ConservationTools.org>, Section 6 “Transactional Costs and Expenses.”

<sup>18</sup> See also 61 Pa. Code § 91.193(b)(18).

(ii) A transfer from a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions

(iii) A transfer from a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the act of June 30, 1981 (P.L.128, No.43), known as the “Agricultural Area Security Law,” and such conservancy has owned the real estate for at least two years immediately prior to the transfer.

(iv) A transfer of an agricultural conservation easement to or from the Commonwealth, a county, a local government unit or a conservancy under authority of the “Agricultural Area Security Law.”

(v) A transfer of a conservation easement or preservation easement under the act of June 22, 2001 (P.L.390, No.29), known as the “Conservation and Preservation Easements Act.”

(vi) A transfer of a perpetual historic preservation easement, a perpetual public trail easement or other perpetual public recreational use easement, a perpetual scenic preservation easement or a perpetual open-space preservation easement to or from the United States, the Commonwealth, a county, a local government unit or a conservancy.<sup>19</sup>

The law (again, as amended through 2016 by Act 84) defines *conservancy* as:

A corporation or association that possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)) and which has as its primary purpose preservation of land for historic,

recreational, scenic, agricultural or open-space opportunities.

## Other excluded transfers

The transfer tax statute provides exclusions for many other types of transactions, which may or may not involve conservation.<sup>20</sup> For example:

- conveyances to the Commonwealth of Pennsylvania or to any of its political subdivisions, agencies, or instrumentalities by gift, dedication, or deed in lieu of condemnation (whether or not for conservation purposes);
- a transfer of real estate to or by a land bank;<sup>21</sup>
- a correctional deed for a previously recorded transaction that does not extend or limit existing legal title or interest for no or nominal consideration;
- certain transfers between family members; leases for the extraction of coal, oil, natural gas or minerals, including assignments of these leases (note that *deeds* transferring these extraction rights are taxable); and the reservation of a life estate.<sup>22</sup>

Additionally, where any entity, including a conservation organization, **leases a property for less than 30 years** (including all options for other than negotiable fair market value at the time of exercise), the transaction is excluded from taxation.<sup>23</sup>

## Claiming an exclusion

The transfer tax generally is due at the time of recording of the document.<sup>24</sup> Where an exclusion is claimed, the document evidencing the real estate transaction

<sup>19</sup> Note that the Local Tax Enabling Act—one of the two laws authorizing local transfer tax—does *not* contain similar exclusions for transfers from a conservancy to a government entity or for conservancy transfers of land encumbered by a perpetual agricultural conservation easement. However, as noted in the footnotes above, most if not all local jurisdictions have conformed their transfer tax ordinances with the Tax Reform Code (the other source of local transfer tax authority) and impose tax only on transactions subject to state transfer tax.

<sup>20</sup> See 72 P.S. § 8102-C.3; and 61 Pa. Code § 91.193 for additional detail on these items as well as for the entire list of excluded transactions.

<sup>21</sup> Act 84 of 2016 added this land bank item. The term “land bank” has the same meaning as given to it in 68 Pa.C.S. § 2103 (relating to definitions).

<sup>22</sup> See 72 P.S. § 8102-C.3; and 61 Pa. Code § 91.193 for additional detail on these items as well as for the entire list of excluded transactions.

<sup>23</sup> See 61 Pa. Code § 91.193(b)(24).

<sup>24</sup> Or within thirty days of acceptance of the document.

(e.g., the special warranty deed, quitclaim deed or grant of conservation easement) must be accompanied by a **Realty Transfer Tax Statement of Value** (known informally as the “exemption affidavit”) at the time the document is presented to the county Recorder of Deeds for recording.<sup>25</sup>

A blank Statement of Value can be found at the Pennsylvania Department of Revenue’s website, <http://www.revenue.pa.gov/>, in the Realty Transfer Tax Forms section of the Forms and Publications area.

The second page of the form contains instructions on how to complete the document, including asking for names of the grantor and grantee, tax parcel information, amount of consideration paid (if any), assessed value, and common level ratio.<sup>26</sup> Section E(2) of the document has a list of exclusions and requests; applicants check off which exclusion is applicable. In the case of a transfer to a conservancy, or one of the other conservation-related transactions excluded from taxation, as outlined above, applicants will need to **check the “other” box and note on the line provided the specific statutory provision upon which the exemption is based.** For instance, in the case of a grant to a conservancy, the applicant would note that “grantee is a tax-exempt conservancy under 72 P.S. § 8102-C.3(18) and 61 Pa. Code § 91.193(b)(18).”<sup>27</sup>

## Gaps in exclusions for conservation transactions

Neither state nor local transfer tax law expressly excludes from taxation a sale of land by a private (non-

<sup>25</sup> 72 P.S. § 8109-C.

<sup>26</sup> The common level ratio for each county can be found at the office of the Recorder of Deeds and online at <http://www.revenue.pa.gov>.

<sup>27</sup> The statute includes penalties for fraud, as well as interest provisions for underpayment of the correct amount of transfer tax. The Commonwealth generally can determine that additional tax and interest is due up to 3 years after the document is recorded. In cases of very substantial underpayment, the statute of limitations is lengthened; and in cases of tax fraud there is no statute of limitations.

conservancy) landowner to a government entity.<sup>28</sup>

Although the government entity (such as a municipality acquiring land under its open space program) would not be liable for transfer tax as an exempt party, the seller would be liable for 100% of the tax.

Additionally, although conservancies may transfer land subject to agricultural conservation easements to private parties without incurring realty transfer tax obligations, this is not the case for land subject to other types of easements. Many if not most conservation easements held by conservancies in Pennsylvania substantially address agricultural conservation and thus might be viewed as “agricultural conservation easements.” However, the statute itself is silent as to what constitutes an agricultural conservation easement in regards to this particular exclusion.

## Resources

\*\*Pennsylvania Department of Revenue, Office of Chief Counsel: tel. 1-717-787-1382

\*\*Pennsylvania Department of Revenue website: <http://www.revenue.pa.gov>

\*\*The realty transfer tax regulations can be found at: <http://www.pabulletin.com/secure/data/vol37/37-50/2306.html>

\*\*Philadelphia’s realty transfer tax ordinance can be found at: <http://www.phila.gov/Revenue/individuals/taxes/Pages/RealtyTransferTax.aspx>.

\*\**Realty Transfer Tax Update*, Pennsylvania Bar Institute (Sept. 2014).

## Resources at ConservationTools.org

To find experts on the topics covered by this guide, see the right hand column of the on-line edition at <http://conservationtools.org/guides/show/141>. The on-

<sup>28</sup> The statute excludes only transfers to government entities by gift, dedication, or deed in lieu of condemnation. 72 Pa. § 8101-C.3(1).

line edition also contains the most up-to-date listing of related library items and guides.

### Related Guides

[Property Tax Exemption for Preserves, Parks, Trails, and Other Conserved Lands](#)

## Submit Comments

Help improve the next edition of this guide. Email your suggestions to the Pennsylvania Land Trust Association at [aloza@conserveland.org](mailto:aloza@conserveland.org). Thank you.

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