

State Real Estate Transfer Tax

Bankruptcy & Receiverships

Chapter 11 of the Bankruptcy Code

1. Would transfer fees be owed by any of the participants in the transfer of real estate out of Chapter 11 bankruptcy proceedings if the transfer took place before the plan confirmation?

Answer: A pre-confirmation transfer is not exempt from the transfer tax. Section 1146(c) of the Bankruptcy Code provides:

- The issuance, transfer or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under Section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax. [Emphasis added.]

Case law provides that a transfer taking place before plan confirmation will not be exempt under Section 1146(c). Cross reference other bankruptcy sales with questions and answers 2 through 5.

Court-Ordered Sales

2. Is a court-ordered sale of property by a bankruptcy judge for a specified amount taxable?

Answer: Yes. However, for exceptions concerning sales under Chapter 11 of the Bankruptcy Code, see question 1.

Receivership and Trustees

3. Is a conveyance by a receiver, administrator or trustee, whether special or general, in a bankruptcy or insolvency proceeding exempt from the SRETT?

Answer: No. However, for exceptions concerning sales under chapter 11 of the Bankruptcy Code, see question 1.

4. Is a conveyance to a receiver, administrator or trustee, whether special or general, in a bankruptcy or insolvency proceeding, exempt from the SRETT?

Answer: Yes, under MCL 207.527 of the SRETT Act.

Trustee in Bankruptcy

5. When a trustee in U.S. Bankruptcy Court sells real property in the performance of their duties, does exemption (h)(i) apply?

Answer: No. MCL 207.526(h)(i) provides an exemption from the SRETT when the grantor is the United States, the State of Michigan, a political subdivision or municipality within the State of Michigan, or an "officer" of either the United States or this state or of a municipality of this state, while acting in his or her official capacity. The bankruptcy trustee is not an "officer" of the United States within the meaning of the exemption but rather is acting as the representative of the estate in bankruptcy. See *California Board of Equalization v Sierra Summit, Inc*, 490 US 844, 109 S Ct 2228, 104 L Ed 2d 910 (1989).

NOTE: Sales of realty under Chapter 11 or Chapter 12 confirmed plans are exempt from SRETT under 11 U.S.C. 1146(a) and 1231(a), respectively.

Consideration

6. Exemption (a) exempts "a written instrument in which the value of the consideration for the property is less than \$100." If an agreement included the purchaser assuming a land contract or agreeing to pay off a mortgage, would this be included in the value of the consideration?

Answer: Yes. Nothing in the law says that currency must be exchanged in order to establish value.

7. A deed is received by a register of deeds with a consideration and also exemption citations on it. If the consideration is on the deed, does the seller have to pay the revenue stamps?

Answer: No. The fact that the consideration paid for the property is shown on the face of the deed does not automatically subject that particular transfer of deed to the SRETT. A proper claim of exemption must be indicated in order for any transfer to be exempt from the tax.

Deeds

8. A person owns a lot and wants to begin construction of a home. The builder requires the lot to be put in the building company's name (quit claim deed). After the house is built, the builder deeds the lot and the house back to the original owner. Is either conveyance subject to the SRETT?

Answer: Yes. Both transactions, the quit claim deed to the builder, and the transfer back to the homeowner, are taxable.

Deeds & Conveyances: Effective Dates

9. When is a transfer of property deemed to have taken place?

Answer: For purposes of administration of the SRETT, the transfer is deemed to have occurred on the date the deed or instrument is dated or, if acknowledged, the date the transfer is acknowledged. This is true unless contrary evidence indicates delivery of a deed occurred later, in which case the date of delivery governs.

Deeds, Conveyances, Exemptions & Proof of Claim

10. Are the SRETT exemption affidavit and a copy of the sales agreement still required to claim an exemption under MCL 207.526(s) of the SRETT?

Answer: No. Specifying exemption under MCL 207.526(s) on the face of the deed will now be accepted (the claim of exemption may be subject to audit or review).

Mortgages

11. When real estate is being conveyed subject to an existing mortgage, what do we use as the value?

Answer: The tax is based upon the total value of the property being transferred. An assumption of the mortgage debt is part of the consideration being received.

Easements

12. Is the grant of an easement for consideration over \$100 subject to SRETT?

Answer: Yes.

Eminent Domain

Condemnation

13. A public authority, having power of eminent domain (condemnation), adopts a resolution of necessity for a public improvement. If it negotiates a purchase of lands and obtains a transfer of title without initiating condemnation proceedings, is the transfer exempt?

Answer: No.

Estates

Beneficiaries

14. The personal representative of an estate transfers title of real property, without consideration, to a person as a beneficiary or distributee under the will of the decedent (testate), or under the laws of decedent and distribution (intestate). Is the transfer exempt?

Answer: The transfer is exempt under MCL 207.526(a) of the SRETT Act.

15. Property from the estate of a decedent is willed to a son who waives his rights to the property. A grandson then contracts to buy the property from the estate. Is the transfer taxable?

Answer: Yes.

Independent Probate

16. In a probate estate under independent probate, the sole heir will receive (without consideration) a deed from the personal representative as there is no provision for an order assigning residue. Does this transfer qualify as exempt?

Answer: Yes.

Sales

17. The personal representative of the estate of a decedent sells real property to a son or daughter of the decedent. Is this transfer exempt?

Answer: No, unless the consideration is less than \$100 (MCL 207.526(a)). This is not a transfer by the parent to a child.

18. Taxpayer sets up a living (grantor) trust. When the grantor dies, the property passes to the beneficiaries of the trust. Is this transfer exempt?

Answer: No, unless the consideration is less than \$100 (MCL 207.526(a)). This is not a transfer by the parent to a child.

Sales and Distributions

19. In a probate estate, two heirs are agreeing to an unequal assignment of the real estate. One heir is paying the estate the difference between the equal share and the value of what is actually received, which is then distributed to the other heir. Which exemption applies?

Answer: Base the transfer tax on the difference in value for which the heir is paying the estate. The remaining interests are transferred free from tax under MCL 207.526(a).

Transfers

20. In a probate estate where the real estate is assigned to the heirs by court order, is a transfer affidavit required?

Answer: No. A transfer of property under a court order or decree where there is no consideration is exempt from the tax under MCL 207.526(l).

Familial Transfers

21. Is a transfer from a grantor to his or her child (including stepchild or adopted child) and the child's spouse exempt under MCL 207.526(j) of the SRETT?

Answer: Yes. A transfer to the grantor's children and their spouses is presumed to create a tenancy by the entireties. The child's spouse holds his or her interest in the entirety and not in shares or portions.

22. Is a transfer from a person to his or her son-in-law or daughter-in-law alone (i.e., not to his or her son or daughter) entitled to an exemption under MCL 207.526(j) of the SRETT?

Answer: No.

23. Is a transfer from a son or daughter to his or her parent or parents entitled to an exemption under MCL 207.526(j) of the SRETT?

Answer: No.

Government Agencies & Organizations

State

24. Are conveyances by the state exempt from tax under MCL 207.526(h)(i)?

Answer: Yes.

Municipalities

25. Are conveyances by a city, village, township or county exempt from tax under MCL 207.526(h)(i)?

Answer: Yes.

26. Are transfers by a community foundation exempt under MCL 207.526(h)(i)?

Answer: Yes, as an instrumentality of a municipal subdivision of the state.

Public University and College

27. Are conveyances by publicly supported state colleges, universities, or community or junior colleges exempt under MCL 207.526 (h)(i)?

Answer: Yes.

Private University or College

28. Are conveyances by private colleges, universities or institutions of higher learning exempt under MCL 207.526(h)(i)?

Answer: No.

Public Schools

29. Are conveyances by a public school, public charter school or university school exempt from tax under MCL 207.526(h)(i)?

Answer: Yes.

Private Schools

30. Are conveyances by private schools exempt under MCL 207.526(h)(i)?

Answer: No.

Parochial & Religious Schools

31. Are conveyances by parochial or religious schools exempt under MCL 207.526(h)(i)?

Answer: No.

Homestead Property

32. Is a transfer of principal residence for which a principal residence exemption is claimed under the School Code of 1976 or the State Education Tax Act exempt under MCL 207.526(u) of the SRETT Act?

Answer: Only if the following conditions are satisfied:

- a. The property being sold or transferred is the principal residence of the seller or transferor,
- b. The property has an SEV at the time of conveyance that is less than or equal to the SEV at the time of acquisition, and
- c. The property was sold or transferred for a price at which a willing buyer and a willing seller would arrive through an arm's-length negotiation.

Indian Reservations

33. Are transfers made by a federally recognized "Indian" community, or an enrolled member of such a community, of lands or interest in lands under the jurisdiction or trusteeship of the Bureau of Indian Affairs, exempt from tax?

Answer: Yes. See MCL 207.526(c) of the SRETT Act.

Judgments

Divorce

34. If a court orders, grants or assigns a party to a divorce title to marital property and orders that person to pay his or her ex-spouse a specific price for the ex-spouse's interest in the property, is the transfer subject to the SRETT?

Answer: Yes. See MCL 207.526(l) of the SRETT Act.

Execution to Force Money Judgement

35. Is a sheriff's deed given according to a sale on a writ of execution to satisfy a judgment exempt from SRETT under MCL 207.526(h)(i)?

Answer: No. The sheriff is not acting for or on behalf of the county, but rather on behalf of the judgment debtor. [This does not include mortgage or land contract foreclosures. See questions and answers 43 and 45].

Joint Tenancies

Family Transactions

36. A person creates a joint tenancy with her two daughters. Upon the person's death, the two daughters, as survivors, continue as joint tenants. The child of one of the daughters purchases the land from his or her mother and aunt. Is the child's purchase taxable?

Answer: The interest conveyed by the daughter to her child is exempt under MCL 207.526(j). The interest conveyed by the aunt to her niece or nephew is taxable unless the consideration is less than \$100.

Tenancies in Common

37. How may tenancies in common and joint tenancies be distinguished from each other for the purpose of an exemption under MCL 207.526(r) of the SRETT?

Answer: A conveyance or devise to two or more persons is, by statutory presumption, construed to create a tenancy in common unless expressly declared to be held in joint tenancy, except in the case of devises or grants made in trust, or made to personal representatives, or to husband and wife, or to mortgagees; MCL 554.44, 554.45, MSA 26.44, 26.45. See Michigan Land Title Standards, Standard 6.1.

A deed or devise to two or more grantees other than husband and wife as "joint tenants" or as "joint tenants and not as tenants in common" creates a joint tenancy, since the language used constitutes an express declaration sufficient to overcome the statutory presumption.

A conveyance from an individual or party to itself and another person or party creates a tenancy in common not entitled to claim exemption under MCL 207.526(r) unless words creating a joint tenancy are used; in which case an exemption may be claimed under MCL 207.526(r).

Example A: John Adams, grantor, to John Adams and James Madison--not exempt.

Example B: John Adams, grantor, to John Adams and James Madison as joint tenants--exempt.

Land Contracts

Assignments

38. On a pre-95 land contract: The original purchaser "assigns interest" to another buyer in 1995. Is this a taxable transaction?

Answer: Yes. When the ultimate buyer pays off the contract and the deed is registered, that transaction will be exempt under MCL 207.526(s).

Deeds

39. Does MCL 207.526(o) exempt the payment of the SRETT for a sale on a land contract?

Answer: The tax is due not when a land contract is signed, but when it is finally paid off. The exemption was originally put into the county transfer tax act to prevent the payment of the tax on the land contract when it was registered and then paying it again when the deed is transferred. The same language from the county tax was put into the SRETT when it was written.

Deeds; Prior Payment

40. If the tax is paid early, before the completion of a land contract, can a refund be requested?

Answer: There is no exemption appropriate for exempting or refunding an early payment of the SRETT. At the completion of the land contract, the recording of the deed should not be taxed again. Reference should be made to the original transfer by liber and page number so this transfer is not taxed twice.

41. Is the sale of development rights to a township under a development rights installment purchase contract and deed of conservation easement subject to the SRETT?

Answer: Both documents convey the rights and interest in lands, real estate or real property and as such are taxable. The installment purchase contract would not be taxable until the completion of the installment agreement.

Extensions

42. A sales agreement originally dated July 1994 has been extended several times, but the sales price remained fixed. An extension was done in 1995. Is this sale exempt from the SRETT?

Answer: Exemption MCL 207.526(s) would still apply.

Foreclosures

43. When a purchaser defaults on a land contract, the original seller may go to court to foreclose on the land contract. The foreclosure is a court-ordered sale of the purchaser's equity in the property (county clerk's sale) subject to redemption. The county clerk auctions the property and issues a county clerk's deed. Is the purchase from a county clerk exempt?

Answer: No. The county clerk does not in this case act in his or her official capacity, i.e., as a representative of the county, but rather for the debtor. Therefore, MCL 207.526(h)(j) does not apply. Since a land contract is not a mortgage, MCL 207.526(v) does not apply.

Mortgages

Assignments

44. Is the grant or assignment of a mortgagee's interest exempt from SRETT under MCL 207.526(d)?

Answer: Yes.

Foreclosures

45. Is a transfer by sheriff's deed or county clerk's deed given in foreclosure of a mortgage exempt from the SRETT?

Answer: Yes. Under MCL 207.526(v).

Non Profit Organizations

Charitable Institutions

46. Certain lands owned by nonprofit charitable institutions are exempt from real property taxes under MCL 211.7(o) of the General Property Tax Act. Are conveyances to such organizations exempt from the SRETT by virtue of the character of such organizations?

Answer: No.

47. Are conveyances by such organizations exempt from the SRETT by virtue of the character of such organizations?

Answer: No.

Educational or Cultural Organizations

48. Certain lands of nonprofit theater, library, education or scientific institutions are exempt from real property taxes under MCL 211.7(n) of the General Property Tax Act. Are conveyances to such organizations exempt from the SRETT by virtue of the character of such organizations?

Answer: No.

49. Are conveyances by such organizations exempt from the SRETT by virtue of the nature of such organizations?

Answer: No.

Religious Organizations

50. Houses of worship, parsonages, and certain buildings or facilities owned or used by religious societies are exempt from real property taxes under MCL 211.7(s) of the General Property Tax Act. Are conveyances to such religious societies exempt from the SRETT by virtue of the character of such organizations?

Answer: No.

51. Are conveyances by such religious societies exempt from the SRETT by virtue of the character of such organizations?

Answer: No.

Options

52. Is an option agreement considered a bona fide sales agreement for the purposes of a claim of exemption under MCL 207.526(s) of the SRETT?

Answer: Yes.

Partitions

Exchanges

53. If tenants in common or joint tenants partition a parcel, i.e., split a parcel into pieces, one owned by each, is the transfer of title taxable?

Answer: Yes. Each conveyance is taxable unless the value of the interest being conveyed to the grantee is less than \$100 (or otherwise exempt).

54. If two parties exchange or trade title to lands or interests in lands, is the transfer taxable?

Answer: Yes. Each transfer is taxable unless the value of the interests being conveyed to a party is less than \$100 (or otherwise exempt).

Partnerships

Limited Liability Companies

55. Will the transfer of property from a partnership to a limited liability company be taxable under the SRETT?
The existing partners in the partnership will also be the members of the limited liability company.

Answer: No. The transfer from the partnership to the limited liability company would be exempt from the SRETT under MCL 207.526(p)(iii).

Refund of Tax

Assignments

56. Can a refund of taxes erroneously paid be requested by the purchaser of a property?

Answer: Section 3, paragraph (2) of PA 330 of 1993 states: "The person who is the seller or grantor of the property is liable for the tax imposed by this act." Only the seller may request a refund of taxes which may have been erroneously paid. The seller or grantor may authorize a refund to the purchaser or another third party, but authorization from the seller must be received in writing. The refund will be issued jointly to the seller and seller's authorized designee.

Tax Returns

Confidentiality

57. Are SRETT returns or copies of the returns received by the Department of Treasury covered by the confidentiality provisions of the Revenue Act MCL 205.28(1)(f)?

Answer: Yes.

Tenancies by the Entireties

Joint Tenants, Life Estates

58. If a husband and wife convey property to the wife's mother for life and the remainder to the wife and the wife's sister, how is the transaction taxed?

Answer: The conveyance of the life estate is taxable unless the consideration is less than \$100. The conveyance by the husband and wife disjoins their tenancy by the entirety. The conveyance of the life estate to the wife's mother is not exemption from SRETT. If the property is held by the wife and the wife's sister as joint tenants (and not as tenants in common), the joint tenancy is exempt under MCL 207.526(r).

59. Would MCL 207.526(j) apply in the case of a son or daughter purchasing real property from the estate of his or her deceased parent?

Answer: No. The exemption was not intended to include conveyances made by the personal representative of the estate of a deceased parent.

Trusts

60. A person created an inter vivos revocable trust with himself or herself as the life beneficiary. Upon the person's death, the trustee conveyed the real property to the named beneficiaries for no consideration. Is this conveyance exempt from the SRETT?

Answer: This conveyance is exempt under MCL 207.526(a).

Personal Residence Trust

61. What is the taxability of an irrevocable qualified personal residence trust where the grantor and his or her spouse retain a term of years before the children or other beneficiaries obtain any interest in the residence?

Answer: The transfer from the grantor to the trust would be exempt under MCL 207.526(a) of the SRETT. The transfer from the trust to the beneficiaries would also be exempt under MCL 207.526(a) if this transfer is a gift.

Sales; Beneficiaries

62. Would there be a SRETT assessed on the "sale" of a property from the trust when the purchaser is the income beneficiary?

Answer: Yes, provided the value of the consideration is greater than \$100.

Valuation

63. Warranty deeds transferring property in various subdivisions show a selling price less a membership certificate to arrive at the price of a lot. On what amount would the SRETT be charged?

Answer: The SRETT is imposed on ". . . the total value of the property being transferred." Value is defined as ". . . the current or fair market worth in terms of legal monetary exchange at the time of the transfer." Assuming the value of the lot is reflected in the selling price, that would be the amount subject to the SRETT. This amount would not be adjusted for the value of the membership certificate.