

May 9, 2012

**DEEDS TO TRUSTEES – DOCUMENTARY STAMP TAX FOR TRUSTS
AND CERTIFICATE OF EXEMPTION**

Purpose

These definitions are provided to aid in the determination of whether a transaction is subject to the documentary stamp tax. This directive provides guidance on the determination of the taxability or exemption of real estate transfers involving trusts. The register of deeds is advised to consult the county attorney for specific situations which are outside the scope of this Directive.

Definitions

Trust. A trust is a fiduciary arrangement in which property is turned over to a trustee to be held and administered for the profit and/or advantage of a beneficiary. The grantor setting up the trust is the trustor. A trust agreement is the written contract establishing the terms of the trust arrangement. Benefits offered by a trust arrangement allow the trust to postpone certain taxes, and avoid probate (a court procedure to prove or validate a will left by a decedent).

Charitable Remainder Trust or Unitrust (CRUT). A CRUT features a charitable organization as the beneficiary, an income stream for the grantor, and income tax advantages.

Irrevocable Trust. An irrevocable trust is a trust that cannot be changed or canceled without the consent of the beneficiary. Contributions cannot be taken out of the trust by the grantor. Irrevocable trusts offer tax advantages that revocable trusts do not (for example, enabling a person to give money and assets away even before he or she dies). **If unstated in the trust agreement, the trust is considered irrevocable.**

Living or Inter Vivos Trusts. A living trust is created during the lifetime of the trustor typically for the trustor's benefit. These trusts are usually revocable.

Revocable Trust. A revocable trust is a trust that can be altered or terminated during the grantor's lifetime. These trusts are considered part of the grantor's estate and are subject to certain taxes. The property is passed on to the beneficiaries only after the grantor's death, and the revocable trust then becomes irrevocable.

Testamentary Trust. A testamentary trust is created as part of a will or testament to assist in tax planning, charitable giving, and preservation of assets for future generations of an individual's family.

Statutory and Regulatory Authority

The Documentary Stamp Tax imposed by [Neb. Rev. Stat. § 76-901](#) does not apply in several instances as provided in [Neb. Rev. Stat. § 76-902](#). The relevant sections of §76-902 are:

. . . (4) Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest;

(5)(a) Deeds between husband and wife, or parent and child, without actual consideration therefor, and (b) deeds to or from a family corporation, partnership, or limited liability company when all the shares of stock of the corporation or interest in the partnership or limited liability company are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, and their spouses, for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for the exemption for family corporations, partnerships, or limited liability companies, the property shall be transferred in the name of the corporation or partnership and not in the name of the individual shareholders, partners, or members;

. . .

(17) Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the property is made under such circumstances as to come within one of the exemptions specified in this section and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue;

(18) Deeds transferring property from a trustee to a beneficiary of a trust;

. . . .

Documentary Stamp Tax Regulation, [REG-52-003.02D](#) provides:

. . . 003.02D Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest. Deeds transferring property into a grantor's trust are entitled to this exemption. Deeds transferring property to or from owners as tenants in common from or to the same owners as joint tenants are not entitled to this exemption.

Procedure and Instructions

Deeds transferring property to a trustee of the grantor's revocable trust are exempt from documentary stamp tax under [REG-52-003.02D](#). In these situations, a signed statement or certification of exemption is not required, but the register of deeds must be satisfied that the trust is indeed revocable.

Deeds transferring property to a trustee of a revocable trust, which is not the grantor's trust, may be taxable; a Certificate of Exemption is then required to verify a valid exemption.

Deeds being filed to change the name of the trustee are exempt from documentary stamp tax under [§ 76-902\(4\)](#). This is true of any kind of trust.

Deeds transferring property to a trustee of the grantor's irrevocable trust are subject to the documentary stamp tax. The filer must provide a valid Certificate of Exemption to be considered exempt from the tax. [§ 76-902\(17\)](#).

Certificate of Exemption

A [Certificate of Exemption – Deeds to Trustees](#) (certification) must be completed and signed by any filer claiming an exemption under § 76-902(17). The filer must indicate on the certification **the specific exemption that would apply if the transfer was made directly from grantor to the beneficiary.**

For example, if the beneficiary is the child of the grantor, the transfer is exempt from documentary stamp tax under [§ 76-902\(5\)](#). However, if the beneficiary is a grandchild of the grantor, the transfer is taxable and a certification is not applicable. If the beneficiary and the grantor are the same person (grantor trust), the transfer is exempt from documentary stamp tax under § 76-902(4); grantor trusts are usually revocable. For exemption purposes, the primary beneficiary determines the tax exemption and any contingent beneficiaries may be disregarded.

Claiming exemption under § 76-902(17) alone is **NOT** acceptable on the certification. A certification is required if claiming exemption number 17 and the specific underlying exemption must be stated by the filer.

The certification should be retained by the register of deeds for three years after the property is distributed from the trust. If the register of deeds suspects that the transfer does not qualify for documentary stamp tax exemption, even if signed and attested to by the filer, the transfer should be reported to the Nebraska Department of Revenue, Property Assessment Division (Department). The Department will review the transaction and request further documentation or information, if necessary.

Real Estate Transfer Statement, Form 521

On the [Real Estate Transfer Statement, Form 521](#), ([Form 521](#)), the grantor's name should be that of the trustor-settlor and the grantee's name should be that of the trustee(s) of the trust.

The Type of Deed, item 8, should be "Trust." The Type of Transfer, item 10, should be either "Revocable Trust" or "Irrevocable Trust," depending on the trust document. The applicable block in item 13 should indicate the relationship between the trustor and the beneficiary. For irrevocable trusts, a notation of "family trust" in the "Other" block of item 13 is not acceptable; **the specific relationship between relatives is required**. If the beneficiary and the trustor are the same person, then "grantor trust" should be indicated in the "Other" block of item 13 on the Form 521.

If the deed is transferring property into a trust and would be exempt if it was made directly from the grantor to the beneficiary, it will be exempt from documentary stamp tax and exemption number 17 may be indicated in fields 25 and 27 on the Form 521. If claiming exemption number 17, a certification must be submitted with the deed and the Form 521.

Deeds transferring property to a nonbeneficiary are subject to the documentary stamp tax whether or not the proceeds of the sale are for the benefit of the beneficiaries. When a deed distributing property out of the trust is offered for recording, refer to the certification that was filed when the subject property was placed into the trust to verify the beneficiaries and to substantiate that the transfer qualifies for exemption (number 18) from the documentary stamp tax.

Documentary Stamp Tax – Exemption of Property Transferred Into a Trust – Neb. Rev. Stat. § 76-902(5)(a) and (b)

All certifications that are filed indicating the transfer qualifies for exemption because it is a trust created for the benefit of a member of the family corporation, partnership, or limited liability company (LLC), should indicate the family entity referenced in the trust document.

The grantor may deed property into an irrevocable trust, the beneficiaries of which are related to one another within the fourth degree of kindred, but are not husband and wife, parent, or child of the grantor. The deed will be exempt from documentary stamp tax only if the irrevocable trust is created for the benefit of a member of a family corporation, partnership, or LLC, in which all the members are related to one another within the fourth degree of kindred. *See*, [Neb. Rev. Stat. § 76-902\(5\)](#).

In analyzing exemptions, the statutes exempting property from taxation are strictly construed and the property must clearly come within the statutory provisions granting these exemptions. *See, Fort Calhoun Baptist Church v. Washington County Bd. of Equalization*, 277 Neb. 25 (2009); *Nebraska State Bar Foundation v. Lancaster County Bd. of Equalization*, 237 Neb. 1 (1991). While these cases dealt with the exemption of property from taxation, the principles established with respect to the interpretation of an exemption are applicable to the documentary stamp tax exemptions. Two distinct exemptions exist in § 76-902(5): 1. Deeds between husband and wife, or parent and child; and 2. Deeds involving family corporations, partnerships, or LLCs.

The second exemption contains a reference to trusts. This reference states that "a trust created for the

benefit of a member of *that* family” (emphasis added), which indicates that the beneficiary of the trust must be a member of the family corporation, partnership, or LLC.

The Department has been asked, if when construing the exemption provided in [§ 76-902\(17\)](#), an exemption for property transferred into an irrevocable trust exists. The exemption exists only if a direct transfer from the grantor to the beneficiary would be exempt from documentary stamp tax as well. It is inconsistent to say that [§ 76-902\(5\)](#) would provide an exemption for property transferred into an irrevocable trust when the same transaction would not be eligible for exemption if the transfer occurred directly from the grantor to a beneficiary. Therefore, the exemption from documentary stamp tax provided by § 76-902(5), as it relates to trusts, is applicable only for trusts created for the benefit of a member of a family corporation, partnership, or LLC.

APPROVED:

/s

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May 9, 2012

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