

## ARTICLE VIII REAL ESTATE TRANSFER TAX

### 8.801: DEFINITIONS:

**PERSON:** Any natural person, trustee, receiver, administrator, executor, conservator, assignee, trust in perpetuity, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to associations shall mean the owners or part owners, and as applied to corporations, the officers.

**RECORDATION:** The recording of documents transferring applicable interests with the office of the recorder of deeds of Cook County, Illinois.

**VALUE:** The amount of the full actual consideration for any transfer covered by this article, including the amount of any mortgage, lien or liens assumed by the grantee or purchaser. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### 8.802: LOCAL REAL ESTATE TRANSFER TAX IMPOSED:

**A. Imposition Of Tax:** A tax is imposed on the privilege of transferring certain interests in real estate in the village. For purposes of this tax, transfer shall include the execution and delivery of any of the following:

1. Deed;
2. Assignment of title or other beneficial interest;
3. A lease or similar contract for a term of more than thirty (30) years (including assignment or reassignment);
4. Articles of agreement to convey deed or similar document upon the future payment of money.

**B. Corporate Transfer:** Transfer shall also include any corporate buyout, merger, or stock transfer, where the real property in the village is specifically valued or specifically set forth as consideration or a portion of the consideration, for any transfer or assignment of corporate equity.

**C. Circumstances Of Transfer:** This tax shall apply to the transfer of any of the foregoing interests in property that is located within the village and shall include, but not be limited to, the following circumstances:

1. The transfer purports to vest either a beneficial interest in or legal title to the real estate.
2. The interest transferred is only the possession or use of the real estate so long as consideration is paid for the possession or use.
3. Even if the consideration is to be paid in the future or the actual transfer is to be made in the future as under articles of agreement.

**D. Rate Of Tax:**

1. Except as otherwise provided in section [8.804](#) of this article, the tax shall be at the rate as set forth in appendix A, division II of this code. If the real estate is transferred subject to a mortgage or similar lien or an existing mortgage is to be assumed by the transferee, the outstanding balance of the mortgage shall be added to any other consideration paid for the real estate interest. If a transaction is determined to be exempt pursuant to this article, a fee shall be assessed for the exemption seal as set forth in appendix A, division II of this code.

2. This tax shall be in addition to any and all other taxes.

E. Liability For Payment: The primary liability for payment of the tax shall be borne by the grantee or purchaser. It shall be unlawful for the grantor or seller to convey real property in the village and for the grantee or purchaser to accept a conveyance if the transfer tax has not been paid. If the tax has not been paid, then the grantee's title shall be subject to the lien provided in section [8.811](#) of this article and the grantee or purchaser shall be liable for payment of the tax.

F. Transfers In Trust: No trustee of real estate shall accept an assignment of beneficial interest in real estate located in the village without first obtaining a statement of consideration from the assignor and assignee and unless revenue stamps in the required amount have been affixed to the assignment.

G. Property Ineligible For Transfer: No interest in property may be transferred from one person to another if the property is in violation of any building regulation or if the transferor of the property owes any judgment, fee or fine of any kind or nature to the village. The sole exception shall be if the transferor or transferee obtains a letter from the department of community development stating that the department has approved the transfer in order to achieve the correction of any violations.

H. Investigation Of Documentation; Immunity: The village shall attempt to expeditiously comply with any request for transfer stamps or an exemption. In any instance, the village shall have at least three (3) business days to process the application. Under no circumstances shall the village, its agents, officials or employees have any liability of any kind or nature for any failure of the real estate transaction to close or a document to be recorded because the village attempted to verify the nature of the transaction or amount owed. The applicant shall have the right under all circumstances to pay the amount that the village asserts to be due. If proof is provided that the amount paid was not the actual amount due, the appropriate amount will be refunded. (Ord. 5157, 12-19-2000, eff. 1-1-2001; amd. Ord. 5189, 5-15-2001)

## **8.803: TAX ON TRANSFER OF INTERESTS IN LEASEHOLDS GREATER THAN THIRTY YEARS:**

Leasehold interests of greater than thirty (30) years shall be taxed as follows:

A. Upon the execution of a lease, the tax shall be paid on the present value of the net lease amount that is payable over the term of the lease. Net lease amount shall exclude tax and utility payments. Present value shall be figured using the interest rate paid on one year U.S. treasury bills on the date of execution of the lease.

B. If the entire lease amount is paid in a lump sum, then the tax shall be figured on the lump sum

C. If the transaction involves the transfer or assignment of an existing leasehold interest, then the tax shall be figured on the value of the consideration paid for the transfer plus the present value of the remaining lease term. This shall be due even if the remaining lease term is less than thirty (30) years provided the original lease was for more than thirty (30) years. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

## **8.804: APPLICATION FOR REBATE:**

Any person who has paid the real estate transfer tax at the rate set forth in appendix A, division II of this code, shall be entitled to a rebate on the purchase of a second or subsequent property in Mount Prospect. This rebate shall be at the rate set forth in appendix A, division II of this code, provided that proper application is made to the village finance department and further provided that the person provides proof of the following:

A. Residential Property:

1. Within one year of making the application for a rebate, the applicant shall have:

- a. Owned and occupied a single-family dwelling unit in the village of Mount Prospect as his or her principal residence and then sold that same dwelling unit; and
  - b. Paid the transfer tax of \$3.00/\$1,000.00; and then
2. Within one year of the date of selling the same residence referred to in subsection A1 of this section, the applicant shall have:
    - a. Purchased and be occupying a single-family dwelling unit within the village as his or her principal residence; and
    - b. Have paid the appropriate tax on that house; or

**B. Nonresidential Property:**

1. The person shall have owned and operated a duly licensed business within the corporate boundaries of the village and the property on which the business was located was sold; and there was a transfer tax of \$3.00/\$1,000.00 paid on such transfer; and
2. Within two (2) years of the date of sale of the previous business property located within the village, the person purchased nonresidential property in the village and currently operates a duly licensed business at the property and paid the appropriate tax on that business property.

Within thirty (30) days following the receipt of application for rebate of real estate transfer tax, the director of finance shall verify the information provided. If, in the opinion of the director of finance, the applicable criteria has been met the director of finance shall cause the rebate to be issued to the person applying for the rebate. For purposes of this section, "owning and operating a business" on any premises shall not mean for the business of construction, remodeling, selling or holding for sale that particular premises. (Ord. 5157, 12-19-2000, eff. 1-1-2001; amd. Ord. 5189, 5-15-2001; Ord. 5616, 2-20-2007)

**8.805: DECLARATION FORMS:**  

A. Declaration Of Consideration: At the time the tax is paid, or application is made for an exemption, there shall also be presented to the director of finance, on a prescribed form, a declaration of consideration signed by at least one of the sellers or grantors and by at least one of the purchasers or grantees involved in the transaction. The declaration may be signed by an attorney or agent, or by a licensed real estate salesperson or broker having knowledge of the terms of the transaction. The declaration shall state the full consideration for the property and shall be deemed a confidential record.

If the property is in a land trust and the trustees are the mere repository of record legal title with a duty of conveying the real estate only when and if directed, in writing, by the beneficiary or beneficiaries, then only the land trust and not the beneficiary or beneficiaries needs to be identified. (Ord. 5157, 12-19-2000, eff. 1-1-2001; amd. Ord. 5576, 7-18-2006; Ord. 6215, 9-15-2015)

**8.806: DOCUMENT OF CONVEYANCE:**  

Every document of conveyance shall show the date of the transaction that it evidences, the names of the grantor and grantee, and a legal description of the property to which it relates. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

**8.807: EXEMPT TRANSACTIONS:**  

The tax imposed by this chapter shall not apply to the following transactions:

- A. A governmental body is the grantee;
- B. The document of transfer only assures that the property secures a debt or other obligation;

- C. The document of transfer, without additional consideration, confirms, corrects, modifies or supplements a previously recorded document;
- D. Transactions in which the actual consideration is less than the amount set forth in appendix A, division II of this code;
- E. The deed is a tax deed;
- F. The deed is a release of property which was security for a debt or other obligation;
- G. A court ordered the transfer and no consideration was paid for the transfer;
- H. A transfer between a subsidiary corporation and a parent for no consideration other than the cancellation or surrender of the subsidiary corporation's stock;
- I. An actual exchange of real property when both properties are within the village limits, except that the money difference or money's worth paid for one or the other shall not be exempt from the tax;
- J. Transfers subject to the imposition of a documentary stamp imposed by the government of the United States, except that such deeds shall not be exempt from filing the declaration;
- K. Conveyances of partition;
- L. Leasehold interests of a lessee occupying the premises as a residence;
- M. Any leasehold interest the term of which is less than thirty (30) years. (Ord. 5157, 12-19-2000, eff. 1-1-2001; amd. Ord. 5189, 5-15-2001; Ord. 5616, 2-20-2007)

### **8.808: EXEMPTION FOR WILLS, GUARDIANSHIPS AND CONSERVATORSHIPS:**



No tax shall be imposed by this article upon delivery or transfer in the following instances, provided, however, that a declaration form is filed:

- A. Transfers by will or intestacy;
- B. A decedent to an executor or administrator;
- C. A minor to a guardian or from a guardian to a ward upon attaining majority;
- D. An incompetent to a conservator, or similar legal representative, or from a conservator, or similar legal representative to a former incompetent upon removal of disability;
- E. A bank, trust company, financial institution, insurance company or other similar entity, or nominee, custodian, or trustee, to a public officer or commission, or person designated by such officer or commission or by a court, in the taking over of its assets, in whole or in part, under state or federal law regulating or supervising such institutions, or upon redelivery or retransfer by any such transferee or successor;
- F. A bankrupt person or a person in receivership to trustee or receiver, or upon redelivery or retransfer by any such trustee or receiver back to the bankrupt or person in receivership;
- G. Trustee to a surviving, substitute, succeeding or additional trustee of the same trust;

H. Upon the death of a joint tenant or tenant by the entirety to the survivor or survivors. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### **8.809: REVENUE STAMPS REQUIRED:**

This tax shall be collected by the director of finance through the sale of revenue stamps. Such revenue stamps shall be available for sale from eight thirty o'clock (8:30) A.M. to five o'clock (5:00) P.M., Monday through Friday at the village offices or at other locations designated by the director of finance. Prior to recording, the revenue stamps shall be affixed to the deed or other instrument of conveyance. Any person affixing a revenue stamp or stamps shall mark it with his or her initials and the day, month and year when the affixing occurs. Such markings shall be made by writing or stamping in indelible ink or by perforating with a machine or punch. However, the revenue stamp(s) shall not be so defaced as to prevent ready determination of the domination and genuineness. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### **8.810: STATE REAL ESTATE TRANSFER DECLARATION; FILING:**

A signed copy of the real estate transfer declaration filed pursuant to section 3 of the real estate transfer act of the state shall be filed with the director of finance by the grantor of any deed or assignor of beneficial interest within ten (10) days after delivery of the deed or assignment of beneficial interest or at the time of payment of the tax, whichever first occurs. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### **8.811: LIEN CREATED; ENFORCEMENT:**

If a document of conveyance is filed for recordation or there is an assignment of beneficial interest conveying real estate within the corporate limits of the village without the purchase of revenue stamps in the required amount, a lien is declared against the real estate in the amount of the tax. The fact that the document of conveyance does not contain an exemption seal or a village revenue stamp in an amount equal to three (3) times the amount of state transfer taxes shall constitute constructive notice of lien. The lien may be enforced by proceedings to foreclose, as in cases of mortgages or mechanics' liens. A suit to foreclose this lien must be commenced within three (3) years after the date of recording the deed. Nothing shall be construed as preventing the village from bringing a civil action to collect the tax imposed by this chapter from any person who has the ultimate liability for payment of the same. Such suit shall include interest and penalties. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### **8.812: ENFORCEMENT; SUIT FOR COLLECTION:**

Whenever any person fails to pay any tax pursuant to this article, or any purchaser or grantee accepts a conveyance where the tax has not been paid, the village shall bring or cause to be brought an action to enforce the payment of the tax, including interest and penalties on behalf of the village in any court of competent jurisdiction. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### **8.813: INTEREST AND PENALTIES:**

In the event of failure by any person to pay to the director of finance the required tax when due, or to file a return when due, interest and penalties shall accumulate and be due consistent with sections [8.2009](#) and [8.2010](#) of this chapter as it may from time to time be amended. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### **8.814: PROCEEDS OF TAX:**

All proceeds resulting from the imposition of the tax under this article including interest and penalties, shall be paid to the village and shall be credited to and deposited in the general fund of the village. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

### **8.815: NONCOMPLYING DOCUMENT OF TRANSFER:**

Any transfer of real property or assignment of beneficial interest recorded or registered in violation of any portion of this article shall be null and void. The village may bring an action in a court of competent jurisdiction to direct the recorder of deeds to indicate the invalidity of the deed or trust document on the records. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

## **8.816: CONSTRUCTION OF EXEMPTIONS:**

All exemptions from the taxes imposed by this article shall be strictly and narrowly construed, and all other provisions of this article shall be broadly construed in order to give effect to the intent of this article, which is to tax all transfers of real property within the village, unless specifically exempt. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

## **8.817: SEVERABILITY:**

If any provision, clause, sentence, paragraph, section or part of this article, or application to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, the judgment shall not affect, impair or invalidate the remainder of this article and the application of such provision to other persons or circumstances. The judgment shall be confined in its operation to the provision, clause, sentence, paragraph or section directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is the legislative intent of the village board of trustees that this article would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section not been included. (Ord. 5157, 12-19-2000, eff. 1-1-2001)

## **8.818: PENALTY FOR VIOLATION:**

In addition to the remaining provisions of this chapter, any person found guilty in a court of competent jurisdiction of violating, disobeying, omitting, neglecting or refusing to comply with or resisting or opposing the enforcement of any provision of this chapter shall be punished by a fine in the amount set forth in appendix A, division III of this code. (Ord. 5518, 11-1-2005)

## **APPENDIX A DIVISION II**

### **CHAPTER 8 - VILLAGE GOVERNMENT MISCELLANEOUS PROVISIONS**

#### **Section 8.802: LOCAL REAL ESTATE TRANSFER TAX IMPOSED:**

D. 1. Real property transfer tax: \$3.00 for every \$1,000.00 value or fraction of \$1,000.00.

Exemption seal: \$15.00.

#### **Section 8.804: APPLICATION FOR REBATE:**

\$2.00 for each \$1,000.00 of the purchase price, so long as all of the requirements of this section are met.

#### **Section 8.807: EXEMPT TRANSACTIONS:**

D. Actual consideration: Less than \$500.00