

January 2023

Deeds to Trustees - Documentary Stamp Tax for Trusts and Certificate of Exemption

Purpose

This directive is provided to aid in the determination of whether a transaction involving trusts is subject to the documentary stamp tax. 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 individual setting up the trust is called the “grantor” or “trustor”. A trust agreement is the written contract establishing the terms of the trust arrangement. Benefits offered by a trust arrangement may allow the postponement of certain taxes and avoidance of probate (a court procedure to distribute the property of a decedent according to either a valid will or state law).

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

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 usually passed on to the beneficiaries only after the grantor’s death, making the revocable trust become irrevocable. If unstated in a trust agreement and the trust is created after January 1, 2005, then the trust is presumed to be revocable. See [Neb. Rev. Stat. § 77-3854](#).

Grantor Trusts. A “grantor trust” is a term used to describe any trust over which the grantor or other owner retains the power to control or direct the trust’s income or assets. If a grantor retains certain powers over the benefits in a trust, the income of the trust will be taxed to the grantor, rather than to the trust. All “revocable trusts” are by definition grantor trusts ([IRC § 676](#)), while an “irrevocable trust” can be treated as a grantor trust if certain conditions contained in [IRC §§ 671 – 678](#) are met.

For more information about basic trust law, see the [IRS’s website](#).

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 spouses, between ex-spouses for the purpose of conveying any rights to property acquired or held during the marriage, or between 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;

...

(19) 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;

(20) 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.

Revocable Trusts: Exemptions #4, #19, and #20

Deeds transferring property to a trustee of a revocable trust are exempt from documentary stamp tax under [REG-52-003.02D](#). The grantor is still viewed as the owner of the assets in the revocable trust and the transfer of real property to such a trust is not seen as limiting or extending title or interest. All revocable trusts are technically grantor trust per the IRS grantor trust rules, see above definition.

Accordingly, documentary stamp tax exemption #4 applies to transfers into revocable trusts. 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.

Filers of deeds transferring property to revocable trusts can also use the exemptions

contained in [Neb. Rev. Stat. §§ 76-902](#)(19) and (20) along with the required Certificate of Exemption, if applicable.

Irrevocable Trusts: Exemptions #19 and #20

Deeds transferring property to a trustee of an irrevocable trust are subject to the documentary stamp tax unless the filer provides a valid Certificate of Exemption to be considered exempt from the tax pursuant to Neb. Rev. Stat. § § 76-902(19).

Exemption #20 may also be used when transferring property from a trustee to a trust beneficiary.

Exemption of Property Transferred Into a Trust: Exemption #5(b)

Two distinct exemptions exist in § 76-902(5): 1. Deeds between spouses, ex-spouses, or parent and child; and 2. Deeds involving family corporations, partnerships, or LLCs or a member of family entity who is also beneficiary of a trust.

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 also be a member of the family corporation, partnership, or LLC. Exemption #5(b) can be used in the case of either a revocable or irrevocable trust.

The Department has been asked, when construing the exemption provided in § 76-902(19), if 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 Neb. Rev. Stat. § 76-902(5) (b) 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)(b), as it relates to trusts, is applicable only for trusts created for the benefit of a member of a family corporation, partnership, or LLC.

Other Trust Situations

Deeds being filed to change the name of the trustee are exempt from documentary stamp tax under Neb. Rev. Stat. § 76-902(4). This is true of any kind of trust. Deeds transferring property from a trustee to a beneficiary of a trust are exempt according to Neb. Rev. Stat. § 76-902(20) whether the trust is revocable or irrevocable.

Regarding exemption #20, when property is transferred out of a trust to a nonbeneficiary because of a sale, the deed is subject to the documentary stamp tax whether or not the proceeds of the sale are for the benefit of the trust 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 #20 from the documentary stamp tax.

In analyzing doc stamp 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.

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(19). The filer must indicate on the certification the specific exemption that would apply if the transfer was made directly from grantor to the beneficiary of the trust. Exemption #19 must be paired with another exemption in order to be applicable.

For example, if the beneficiary of a trust is the child of the grantor, the transfer is exempt from documentary stamp tax using exemption #19 paired with [exemption #5\(a\)](#) and reflecting that relationship on the certification and on the Form 521 as described below. However, if the beneficiary is a grandchild of the grantor, there is no other exemption that can be paired with exemption #19 and transfer is taxable.

The certification should be retained by the register of deeds for three years after the transfer to 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 grantor of the trust and the grantee's name should be that of the trustee(s) of the trust.

The Type of Deed, item 8, should be "Trust/Trustee." The Type of Transfer, item 10, should be either "Revocable Trust" or "Irrevocable Trust," depending on the trust document. The block in item 13 should indicate the relationship between the trustor and the beneficiary, if applicable, when using exemption #19. The specific family relationship between relatives is required. If claiming exemption #19, a [Certificate of Exemption- Deeds to Trustees](#) must be submitted with the deed and exemption # 19 should be indicated in fields 25 and 27 on the Form 521.

For the Tax Commissioner

APPROVED:

/s

Ruth A. Sorensen
Property Tax Administrator
January 6, 2023