

HOUSE SUBSTITUTE TO SENATE BILL 97

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 48 of the Official Code of Georgia Annotated, relating to intangible taxes, so as to provide that such taxes shall not apply to certain transactions between individuals and related entities; to provide that the person responsible for the collection of the real estate transfer tax, distributions, reporting, and the performance of the other related duties shall be the clerk of the superior court; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 6 of Title 48 of the Official Code of Georgia Annotated, relating to intangible taxes, is amended by striking Code Section 48-6-2, relating to exemptions, and inserting in its place a new Code section to read as follows:

"48-6-2.

(a) The tax imposed by Code Section 48-6-1 shall not apply to:

(1) Any instrument or writing given to secure a debt;

(2) Any deed of gift;

(3) Any deed, instrument, or other writing to which any of the following is a party: the United States; this state; any agency, board, commission, department, or political subdivision of either the United States or this state; any public authority; or any nonprofit public corporation;

(4) Any lease of lands, tenements, standing timber, or other realty or any lease of any estate, interest, or usufruct in any lands, tenements, standing timber, or other realty;

(5) Any transfer of real estate between a husband and wife in connection with a divorce case;

(6) Any order for year's support awarding an interest in real property as provided in Code Section 53-5-11 of the 'Pre-1998 Probate Code,' if applicable, or Code Section 53-3-11 of the 'Revised Probate Code of 1998 ';

(7) Any deed issued in lieu of foreclosure if the deed issued in lieu of foreclosure is for a purchase money deed to secure debt that has been in existence and properly executed and recorded for a period of 12 months prior to the recording of the deed in lieu of foreclosure;

(7.1) The deed from the debtor to the first transferee at a foreclosure sale;

(8) Transfer of property which is acquired as provided in Code Sections 32-3-2 and 32-3-3;

(9) Any deed of assent or distribution by an executor, administrator, guardian, trustee, or custodian; any deed or other instrument carrying out the exercise of a power of appointment; and any other instrument transferring real estate to or from a fiduciary; provided, however, that the exemption provided under this paragraph shall apply only if the transfer is without valuable consideration; and

(10) Any deed, instrument, or other writing which effects a division of real property among joint tenants or tenants in common if the transaction does not involve any consideration other than the division of the property; and

(11)(A) Any deed, instrument, or other writing through which real property is transferred from one or more individual owners to a corporation, partnership, or other entity if the individual owner or owners of the real property also have a majority ownership interest in the corporation, partnership, or other entity to which the property is transferred; or

(B) Any deed, instrument, or other writing through which real property is transferred from a corporation, partnership, or other entity to one or more individuals if the individual or individuals to whom the property is transferred also have a majority ownership interest in the corporation, partnership, or other entity by which the property is transferred.

(b) In order to exercise any exemption provided in this Code section, the total consideration of the transfer shall be shown."

SECTION 2.

Said chapter is further amended by striking Code Section 48-6-4, relating to payment of real estate transfer tax, certification of payment, and recording of deed, in its entirety and inserting in its place a new Code Section 48-6-4 to read as follows:

"48-6-4.

(a) It is the intent of the General Assembly that the tax imposed by this article be paid to the clerk of the superior court or his or her deputy prior to and as a prerequisite to the filing for record of any deed, instrument, or other writing described in Code Section 48-6-1.

(b) No deed, instrument, or other writing described in Code Section 48-6-1 shall be filed for record or recorded in the office of the clerk of the superior court or filed for record or recorded in or on any other official record of this state or of any county until the tax imposed by this article has been paid; provided, however, that any such deed, instrument, or other writing filed or recorded which would otherwise constitute constructive notice shall constitute such notice whether or not such tax was in fact paid.

(c) The amount of tax to be paid on a deed, instrument, or other writing shall be determined on the basis of written disclosure of the consideration or value of the interest in the property granted, assigned, transferred, or otherwise conveyed. The disclosure shall be made on a form or in electronic format prescribed by the commissioner and provided by the ~~commissioner~~ clerk of the superior court. By the fifteenth day of the month following the month the deed, instrument, or other writing is recorded, a physical or electronic copy of each disclosure shall be forwarded or made available electronically to the state auditor and to the tax commissioner and the board of tax assessors in the county where the deed, instrument, or other writing is recorded.

(d) Upon payment of the correct amount of tax, the clerk of the superior court or his or her deputy shall enter upon or attach to the deed, instrument, or other writing a certification of the fact that the tax as imposed by this article has been paid, the date, and the amount of the tax. The certification shall be signed by the clerk or deputy clerk receiving the tax. The certification may also be attested to electronically by the clerk or deputy clerk in such manner as may be prescribed by the commissioner.

(e) The certificate entered upon or attached physically or electronically to the deed, instrument, or other writing shall be recorded with the deed, instrument, or other writing and shall be in the physical or electronic form required by the commissioner. In each case, however, the certificate shall bear the signature of the clerk or his or her deputy. The certificate may be relied upon by subsequent purchasers or lenders as evidence that the proper tax has been paid. In the event any deed, instrument, or other writing upon which tax is imposed by this article is required to be recorded in more than one county, the required tax shall be paid to the clerk or his or her deputy of the county in which the deed, instrument, or other writing is first recorded."

SECTION 3.

Said chapter is further amended by striking Code Section 48-6-5, relating to the collection of real estate transfer tax and fees, in its entirety and inserting in its place a new Code Section 48-6-5 to read as follows:

"48-6-5.

(a) Each clerk of the superior court ~~is designated as an agent of the commissioner for the purpose of~~ shall be responsible for collecting the tax provided in this article. Each clerk may affix certificates to the deeds, instruments, or other writings with respect to which a tax is required to be paid pursuant to this article. Each clerk shall also perform the duties provided in this article.

(b) In the performance of the duties imposed by this article, each clerk of the superior court shall be entitled to a fee in addition to all other fees provided by law of 50¢ for each deed, instrument, or other writing with respect to which a tax is required to be paid as provided in this article and filed for record and recorded in the county in which the clerk of the court holds office. The fee shall be withheld from the funds received in payment of the tax ~~and remitted to the commissioner as provided in this article~~. Fees withheld by a clerk shall be distributed as follows:

(1) In the event the clerk withholding the fees is compensated on a salary basis, the amount of the fees withheld shall be paid into the treasury of the county; or

(2) In the event the clerk is not compensated on a salary basis, the amount of the fees withheld shall be retained by the clerk as compensation for the duties performed under this article."

SECTION 4.

Said chapter is further amended by striking Code Section 48-6-6, relating to reports of real estate transfer tax, in its entirety and inserting in its place a new Code Section 48-6-6 to read as follows:

"48-6-6.

Within 60 days of the end of each calendar year, the clerk of the superior court shall file with the commissioner a report showing the total amount of tax distributed among the state, county, and municipalities during the preceding calendar year. Each clerk of superior court shall remit to the commissioner at least once every 30 days and at more frequent intervals as the commissioner may direct all funds collected by the clerk in payment of the tax imposed by this article and shall make appropriate reports as the commissioner requires."

SECTION 5.

Said chapter is further amended by striking Code Section 48-6-8, relating to the distribution of real estate transfer tax, in its entirety and inserting in its place a new Code Section 48-6-8 to read as follows:

"48-6-8.

~~At~~ At least once every 30 days, all revenues derived from the tax imposed by this article shall be distributed among the state and municipalities in which the real property is situated

1 and the county in which the real property is situated in the same proportion that revenues
2 derived from the taxes imposed by Article 3 of this chapter are divided. If the real property
3 is situated in more than one county, the appropriate portion of the tax shall be equitably
4 divided among the counties by the ~~commissioner~~ clerk of the superior court."

5 **SECTION 6.**

6 This Act shall become effective on July 1, 2003.

7 **SECTION 7.**

8 All laws and parts of laws in conflict with this Act are repealed.