

SECTION 12-37-3150. Determining when to appraise parcel of real property.

(A) For purposes of determining when a parcel of real property must be appraised, an assessable transfer of interest in real property includes, but is not limited to, the following:

- (1) a conveyance by deed;
- (2) a conveyance by land contract;
- (3) a conveyance to a trust, except if:
 - (a) the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both; or
 - (b) the settlor or the settlor's spouse, or both, conveys property subject to the special four percent assessment ratio pursuant to Section 12-43-220(c) and the sole present beneficiary or beneficiaries is the child or children of the settlor or the settlor's spouse, but a subsequent conveyance of this real property by the beneficiary child or children is not exempt from the provisions of this section;
- (4) a conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both;
- (5) a change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary;
- (6) a conveyance by distribution under a will or by intestate succession, except if:
 - (a) the distributee is the decedent's spouse; or
 - (b) the distributee is the child or children of the decedent, the decedent did not have a spouse at the time of the decedent's death, and the property is subject to the special four percent assessment ratio pursuant to Section 12-43-220(c), but a subsequent conveyance of this real property by the distributee child or children is not exempt from the provisions of this section;
- (7) a conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than twenty years or the lease grants the lessee a bargain purchase option. As used in this item, "bargain purchase option" means the right to purchase the property at the termination of the lease for not more than eighty percent of the property's true cash value at the termination of the lease. This item does not apply to personal property or that portion of the property not subject to the leasehold interest conveyed;
- (8) a transfer of an ownership interest in a single transaction or as a part of a series of related transactions within a twenty-five year period in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than fifty percent of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. This provision does not apply to transfers that are not subject to federal income tax, as provided in subsection (B)(1), including, but not limited to, transfers of interests to spouses. The corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the applicable property tax assessor on a form provided by the Department of Revenue not more than forty-five days after a conveyance of an ownership interest that constitutes an assessable transfer of interest or transfer of ownership under this item. Failure to provide this notice or failure to provide accurate information of a transaction required to be reported by this subitem subjects the property to a civil penalty of not less than one hundred nor more than one thousand dollars as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other penalties that may apply. Failure to provide this notice is a separate offense for each year after the notice was required;
- (9) a change of use of agricultural real property which subjects it to the rollback tax;
- (10) a change of use of real property when classification of property changes as a result of a local zoning ordinance change; or
- (11) the passage of twenty years since the later of the base year or the last assessable transfer of interest for real property owned by a publicly-held entity whose stock, shares, or other ownership interests are traded on a regulated exchange, a pension fund, or other similar entity.

An assessable transfer of interest resulting in the appraisal required pursuant to this article occurs at the time of execution of the instruments directly resulting in the transfer of interest and without regard as to

whether or not the applicable instruments are recorded. Failure to record instruments resulting in a transfer of interest gives rise to no inference as to whether or not an assessable transfer of interest has occurred.

(B) An assessable transfer of interest does not include:

(1) transfers not subject to federal income tax in the following circumstances:

- (a) 1033 (Conversions-Fire and Insurance Proceeds to Rebuild);
- (b) 1041 (Transfers of Property Between Spouses or Incident to Divorce);
- (c) 351 (Transfer to a Corporation Controlled by Transferor);
- (d) 355 (Distribution by a Controlled Corporation);
- (e) 368 (Corporate Reorganizations); or
- (f) 721 (Nonrecognition of Gain or Loss on a Contribution to a Partnership).

Number references in the above subitems are to sections of the Internal Revenue Code of 1986, as defined in Section 12-6-40;

(2) a transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease;

(3) a transfer through foreclosure or forfeiture of a recorded instrument or through deed or conveyance in lieu of a foreclosure or forfeiture, until the redemption period has expired;

(4) a transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes;

(5) a conveyance to a trust if the settlor or the settlor's spouse, or both, convey the property to the trust and the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both;

(6) a transfer for security or an assignment or discharge of a security interest;

(7) a transfer of real property or other ownership interests among members of an affiliated group. As used in this item, "affiliated group" is as defined in Section 1504 of the Internal Revenue Code as defined in Section 12-6-40. Upon request of the applicable property tax assessor, a corporation shall furnish proof within forty-five days that a transfer meets the requirements of this item. A corporation that fails to comply with this request is subject to a civil penalty as provided in Section 12-37-3160(B);

(8) a transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the applicable property tax assessor, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within forty-five days that a transfer meets the requirements of this item. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with this request is subject to a civil penalty as provided in Section 12-37-3160(B);

(9) a transfer of an interest in a timeshare unit by deed or lease;

(10) a transfer of an undivided, fractional ownership interest in real estate in a single transaction or as a part of a series of related transactions, if the ownership interest or interests conveyed, or otherwise transferred, in the single transaction or series of related transactions within a twenty-five year period, is not more than fifty percent of the entire fee simple title to the real estate;

(11) a transfer to a single member limited liability company, not taxed separately as a corporation, by its single member or a transfer from a single member limited liability company, not taxed separately as a corporation, to its single member, as provided in Section 12-2-25(B)(1);

(12) a conveyance, assignment, release, or modification of an easement, including, but not limited to:

- (a) a conservation easement, as defined in Chapter 8, Title 27;
- (b) a utility easement; or
- (c) an easement for ingress, egress, or regress;

(13) a transfer or renunciation by deed, release, or agreement of a claim of interest in real property for the purpose of quieting and confirming title to real property in the name of one or more of the existing owners of the real property or for the purpose of confirming or establishing the location of an uncertain or disputed boundary line;

(14) the execution or recording of a deed to real property for the purpose of creating or terminating a joint tenancy with rights of survivorship, provided the grantors and grantees are the same; or

(15) a transfer of a fractional interest between family members for zero monetary consideration, or a de minimis monetary consideration, whereby both the grantor and the grantee owned an interest in the property prior to the transfer. For purposes of this item, a family member includes a spouse, parent, brother, sister, child, grandparent, or grandchild.

HISTORY: 2006 Act No. 388, Pt IV, Section 1, eff upon ratification of amendment to Article X of the Constitution (ratified April 26, 2007); 2007 Act No. 57, Sections 7.C.1 and 7.C.2, eff April 26, 2007, applicable for property tax years beginning after 2006; 2010 Act No. 275, Sections 1.A, 1.B, 1.C, 1.D, eff June 16, 2010; 2012 Act No. 179, Section 4, eff May 25, 2012.

Editor's Note

2007 Act No. 57, Section 7.D, provides as follows:

"Notwithstanding the general effective date of this act [June 6, 2007], this section takes effect upon ratification of an amendment to the Constitution of this State proposed pursuant to Joint Resolution 402 of 2006 [ratified April 26, 2007] and applies for property tax years beginning after 2006."

2010 Act No. 275, Section 3, provides:

"This act takes effect upon approval by the Governor, and shall apply to real property transfers after 2009. No refund is allowed on account of values adjusted by the changes to the provisions of Section 12-37-3150."

2012 Act No. 179, Section 5, provides as follows:

"This act takes effect upon approval by the Governor and applies to property tax years beginning after 2011."