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Mortgage Tax

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Mortgage Tax

Reference Number: CTAS-799

The "mortgage" tax is a tax on the privilege of recording or filing any instrument evidencing an indebtedness, including but not limited to mortgages, deeds of trust, conditional sales contracts, UCC financing statements and liens on personal property, other than motor vehicles. The mortgage tax is not levied on the recording of judgment liens, contractor's liens, subcontractor's liens, furnisher's liens, laborer's liens, and mechanic's and materialmen's liens, nor is the tax due on mortgages or deeds of trust issued under the *Home Equity Conversion Act* (i.e., reverse mortgages) and which are labeled as such on the face of the instrument. Also, no mortgage tax is due on the recording of instruments giving notice of the creation of a lien, security interest or pledge wherein an energy acquisition corporation formed for the benefit of a local government is either the secured party or the debtor.

The rate of the mortgage tax is \$.115 on each one hundred dollars (\$100.00) over two thousand dollars (\$2,000.00) of indebtedness. The incidence of the tax is declared to be on the mortgagor, grantor or debtor, as evidenced by the instrument offered for recording.

The word "indebtedness" as used in this tax law means the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement. If the principal indebtedness secured is not determinable from the terms of the instrument, then the statute calls for the tax to be determined according to the value of the property covered by the instrument.

Every recorded instrument evidencing an indebtedness must contain the following language on the face of the instrument or in an attached sworn statement:

Maximum principal indebtedness for Tennessee recording tax purposes is \$_____.

When the collateral is located both within and outside of Tennessee, the tax is calculated according to the value of the collateral located within Tennessee as a percentage of the total value of collateral securing the debt.

Except for Uniform Commercial Code transactions, the taxpayer's security interest will be entitled to priority only to the amount on which tax has been paid. American City Bank of Tullahoma v. Western Auto Supply Co., 631 S.W.2d 410 (Tenn. Ct. App. 1981), appeal denied April 12, 1982. However, no link exists between whether tax is paid and priority of instruments filed under the provisions of the Uniform Commercial Code. T.C.A. § 47-9-403.

There is a special governmental exemption not mentioned earlier. The recording or re-recording of all transfers of realty in which a "municipality" is the grantee or transferee and all instruments evidencing an indebtedness in which a "municipality" is the holder or owner of the indebtedness is exempt from the transfer or "mortgage" tax as the case may be. For the purposes of these two taxes, "municipality" means the state of Tennessee or any county, or incorporated city or town, utility district, school district, power district, sanitary district, or other municipal, quasi-municipal, or governmental body or political subdivision of this state and any agency, authority, branch, bureau, or instrumentality of this state. T.C.A. § 67-4-409(f). Additionally, when a governmental entity (federal, state or local) is the debtor, the instrument is exempt from the "mortgage" tax under the judicial doctrine of sovereign immunity.

In transactions involving certain manufacturing type facilities, the total tax is capped at one hundred thousand dollars (\$100,000.00) for the transfer tax and five hundred thousand dollars (\$500,000.00) for the "mortgage" tax. T.C.A. § 67-4-409(h).

Also exempt from the mortgage tax are UCC instruments which secure an interest solely in "investment" property such as stocks and bonds.

Also, the recording or filing of certain instruments is exempt under federal law. For example, transfers that are made pursuant to bankruptcy court orders are exempt from the tax.

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