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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*.**

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CHAPTER R-5.1

REAL PROPERTY TRANSFER TAX ACT

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. (1) In this Act — Definitions

(a) "assessed value" means the value of real property at the time of registering a deed respecting the real property, as taken from the current assessment roll maintained by the Minister under the Real Property Assessment Act; — assessed value

(b) "deed" means any instrument whereby real property is transferred to any person; — deed

(c) "grantee" means the person to whom real property is transferred by deed and for value or otherwise; — grantee

(d) "member of the family" means, in relation to a person, the father, mother, spouse, common-law spouse, grandfather, grandmother, son, daughter, brother, sister, grandson, granddaughter, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, step-father, step-mother, step-son, step-daughter, step-brother or step-sister of the person; — member of the family

(e) "Minister" means the Minister of Finance of the province and includes anyone designated by the Minister to act on his or her behalf; — Minister

(f) "purchaser's affidavit" means the affidavit respecting the consideration paid for real property that is required to be filed by the purchaser of the real property under section 15 of the *Real Property Assessment Act* R.S.P.E.I. 1988, Cap. R-4; — purchaser's affidavit

(g) "real property" includes — real property

(i) land including land covered by water,

(ii) land and any building or structure situated thereon, including machinery, installations, and equipment affixed to a building and contributing to the utility of the building,

(iii) a bulk storage tank, and any supply pipe lines connected therewith, and

(iv) any wire, cable, pipe, tower, installation, equipment, or thing, or structures other than buildings, forming part of a television broadcasting, transmission or re-broadcasting or retransmission system including a cable television system, telephone, electric

light, telegraph or telecommunications system or any electric power distribution system;

real property

(h) "real property" does not mean
(i) growing or non-harvested crops in or on land,
(ii) all that part of a mine below the surface of the ground,
(iii) land used as a public right-of-way, or
(iv) mobile homes;

Registrar

(i) "Registrar" means the Registrar of Deeds, an Assistant Registrar of Deeds or any person authorized to perform the duties of the Registrar of Deeds under the *Registry Act* R.S.P.E.I. 1988, Cap- R-10;

tax

(j) "tax" means the tax imposed by this Act;

transfer

(k) "transfer" includes, in respect of real property, a conveyance or assignment of real property and a vesting of real property.

Person deemed to wholly own corporation

(2) For the purposes of this Act, a person who transfers real property to a corporation is deemed to wholly own the corporation at the time of the transfer, if
(a) the person then holds; or
(b) the person and one or more of the members of his or her family together then hold,
the beneficial ownership of not less than 95 per cent of the total issued and outstanding voting shares of the corporation. 2006,c.49,s.1; 2006,c.18,s.1; 2010,c.31,s.3; 2012,c.17,s.2; 2015,c.28,s.3.

Administration

2. The Minister shall administer this Act. 2005,c.49,s.2.

Tax

3. (1) Every person who tenders for registration in the province a deed shall, before the deed is registered, pay a tax computed at the rate of one percent of the greater of
(a) the consideration for the transfer; and
(b) the assessed value of the real property.

Assessed value where transfer of part interest

(2) For the purpose of subsection (1), where only a part of an estate or an interest in real property is being transferred, the assessed value shall be calculated by determining the percentage that the estate or interest being transferred is of the whole estate or interest, and then determining the amount which is equal to the product of that percentage and the assessed value of the real property.

Receipt

(3) Where a Registrar has collected payment of a tax imposed under subsection (1) in respect of the registration of a deed, the registrar shall issue a receipt showing that at the date of the receipt the tax respecting the registration of the deed has been paid.

Tax only to be paid once

(4) Where a deed may be registered in more than one county, the tax is payable only once in respect of the first of such transfers tendered for registration. 2005,c.49,s.3.

Exemptions

4. (1) No tax is payable on the registration of the following:

(a) a deed of confirmation, rectification or modification;

(b) a deed by which a person transfers real property to himself or herself for the purpose of consolidation;

(c) a deed by which real property is transferred

(i) from an executor or administrator to beneficiaries under a will, or

(ii) from an administrator to heirs under intestacy;

(d) a deed by which joint tenants become tenants in common or tenants in common become joint tenants;

(e) a deed by which a mortgagee transfers real property to himself or herself as grantee in the exercise of a power of sale;

(f) a deed by which land reverts, escheats or is forfeited to Her Majesty in right of the Province or by which land that has reverted, escheated or been forfeited to Her Majesty in right of the Province is returned;

(g) a deed by which a person transfers real property to a trustee to be held in trust on his or her behalf;

(h) a deed by which a trustee transfers real property to the person for whom the real property was held in trust;

(i) a deed by which real property forming part of the estate of a bankrupt is transferred to the trustee in bankruptcy;

(j) a deed by which real property is transferred

(i) to a person who is a member of the family of the person making the transfer, and

(ii) without any consideration, in excess of $1, to the person making the transfer;

(j.1) a deed by which real property is transferred from a transferor to a transferee who is a spouse or former spouse of the transferor if the transfer is made pursuant to a written separation agreement or a court order, made under the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2.1;

(k) a deed by which real property is transferred to a corporation that is wholly owned by the person making the transfer;

(k.1) a deed by which real property is transferred from a corporation to an individual who wholly owns the corporation making the transfer;

(k.2) a deed by which real property is transferred from a corporation to another corporation if both corporations are wholly owned by the same person, either directly or through another wholly-owned corporation;

(l) a deed by which real property forming part of the estate of a bankrupt is transferred from the trustee in bankruptcy to a mortgagee of the real property;

(m) a deed by which a mortgagee, pursuant to a mortgage default insurance agreement with the Canada Mortgage and Housing Corporation, transfers real property to the Canada Mortgage and Housing Corporation, or a successor;

(n) a deed by which real property is transferred to Her Majesty in right of the Province;

(o) a deed by which real property is transferred to a municipality;

(p) a deed by which real property is transferred to a registered non-profit organization;

(q) a deed by which real property is transferred from a registered non-profit organization, to the recipient, as a gift, donation or prize.

Low-cost real property exemption

(2) No tax is payable on the registration of a deed transferring real property if the purchaser's affidavit registered in respect of the transfer indicates that the greater of

(a) the consideration for the transfer; and

(b) the assessed value of the real property,

does not exceed $30,000.

Transitional

(3) Repealed by 2006,c.18,s.2. 2005,c.49,s.4; 2006,c.19,s.1; 2006,c.18,s.2; 2008,c.59,s.1.

Corporation liable to pay tax on ceasing to be wholly owned by person making transfer

4.1 (1) Where

(a) a corporation, pursuant to clause 4(1)(k), does not pay tax on the registration of a deed transferring real property to that corporation from a person who wholly owns the corporation; and

(b) the person who made the transfer to the corporation ceases to wholly own the corporation at any time within the twelve months following the date the deed is registered,

the corporation is liable to pay the tax that otherwise would have been payable on the registration of the deed, and the tax is due and payable as of the date that the person referred to in clause (a) ceases to wholly own the corporation.

Corporation liable to pay tax on ceasing to be wholly owned by person owning corporation making transfer

(2) Where

(a) a corporation, pursuant to clause 4(1)(k.2), does not pay tax on the registration of a deed transferring real property to that corporation from another corporation;

(b) both corporations referred to in clause (a) are, on the date the deed is registered, wholly owned by the same person; and

(c) the person who wholly owns both of the corporations on the date the deed is registered ceases to wholly own the corporation to which

the real property is transferred at any time within the twelve months following that date,

the corporation to which the real property is transferred is liable to pay the tax that otherwise would have been payable on the registration of the deed, and the tax is due and payable as of the date that the person referred to in clause (c) ceases to wholly own the corporation.

Payment of tax to Registrar

(3) Where a corporation is liable to pay the tax under subsection (1) or (2), the corporation shall pay the tax to the Registrar on or before the end of the month following the month in which the tax becomes due and payable. 2009,c.17,s.1.

Definitions

5. (1) In this section

first time home buyer

(a) "first time home buyer" means an individual who, as of the date a deed is registered transferring real property containing a residence to the individual,

(i) either

(A) is a Canadian citizen, or

(B) is a permanent resident as defined in the *Immigration and Refugee Protection Act* (Canada),

(ii) either

(A) has continuously maintained his or her principal residence in the province throughout a period of not less than six months immediately before the registration date, or

(B) has been subject to tax under clause 3(a) of the *Income Tax Act* R.S.P.E.I. 1988, Cap. I-1 and has filed a return under the Act in at least two of the six taxation years immediately preceding the registration date,

(iii) has not previously held a registered interest in real property that constituted the individual's principal residence, and

(iv) has not previously obtained a first time home buyer's exemption under this section;

principal residence

(b) "principal residence" means the usual place where an individual makes his or her home.

First time home buyer's exemption

(2) No tax is payable on the registration of a deed transferring real property to the purchaser of the real property if

(a) the person is a first time home buyer and files a declaration to that effect on the registration of the deed; and

(b) the purchaser's affidavit registered in respect of the transfer indicates that

(i) the individual intends to occupy or use the real property as his or her principal residence, and

(ii) the greater of

(A) the consideration for the transfer, and

(B) the assessed value of the real property,

does not exceed the maximum dollar amount prescribed by the regulations.

Liable for tax on failure to occupy home

(3) Where, pursuant to subsection (2), a person does not pay tax on the registration of a deed, the person is liable to and shall pay the tax that would otherwise have been payable on the registration of the deed if the person does not occupy or use the real property as his or her principal residence for a period of at least 183 consecutive days following the date the deed is registered.

Refund

(4) Where, at the time of the registration of a deed in respect of a transfer of real property,

(a) a purchaser is ineligible for an exemption under subsection (2) as a first time home buyer because he or she has not satisfied either condition in subclause 5(1)(a)(ii) but has satisfied all the other conditions in clause 5(1)(a); and

(b) the purchaser has paid the tax,

the Minister may, on application by the purchaser, refund the tax paid if the purchaser has, as of the date the application is submitted, occupied the real property as his or her principal residence for a period of at least 183 consecutive days following the date the deed is registered. 2005,c.49,s.5; 2006,c.37,s.1, 2; 2006,c.18,s.3; 2008,c.29,s.1.

Regulations

5.1 The Lieutenant Governor in Council may make regulations

(a) respecting the declarations required to be filed under subsection 5(2);

(b) prescribing, for the purpose of determining a person's entitlement to the exemption from tax under subsection 5(2), the maximum dollar amount referred to in clause (b) of that subsection; and

(c) respecting such other matters as the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes and provisions of this Act. 2006,c.18,s.4.

Consequential amendment

6. Clause 1(f) of the *Revenue Administration Act* R.S.P.E.I. 1988, Cap. R-13.2 is amended

(a) by the deletion of the semicolon following subclause (iv) and the substitution of a comma;

(b) by the deletion of the period following subclause (v) and the substitution of the words ", and**"; and**

(c) by the addition of the following after subclause (v):

(vi) the *Real Property Transfer Tax Act*;