

CHAPTER 30. DOCUMENTARY STAMPS

Section

710:30-1-1. Purpose..... 1
710:30-1-2. Definitions..... 1
710:30-1-3. Purchase and affixing of documentary stamps.....2
710:30-1-4. Documentary stamp tax based on consideration; interest; property2
710:30-1-5. Use of documentary stamps on conveyances by defaulting mortgagee; exemptions3
710:30-1-6. Examination of county records.....3
710:30-1-7. Assessment for nonpayment or insufficient payment; payment; protest...3
710:30-1-8. Property subject to the documentary stamp tax.....4
710:30-1-9. Conveyances not subject to the documentary stamp tax..... 5
710:30-1-10. Duties and responsibilities of the county clerk..... 5

[**Authority:** 68 O.S. §§203, 3205]

[**Source:** Codified 12-30-91]

CHAPTER 30. DOCUMENTARY STAMPS**[Authority:** 68 O.S. §§203, 5105]**[Source:** Codified 12-30-91]**710:30-1-1. Purpose**

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to documentary stamps.

710:30-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Administrator" means the Director of the Business Tax Services Division of the Oklahoma Tax Commission. It is the intent of this Chapter that as Division Director, the actions and activities of the administrator shall be in compliance with directives established by the Commissioners of the Oklahoma Tax Commission.

"Attorney General" means the chief legal officer of the State of Oklahoma.

"Commission" means the Oklahoma Tax Commission.

"Consideration" means the actual pecuniary value exchanged or paid or to be exchanged or paid in the future, whether in money or otherwise, for the transfer or conveyance of an interest of realty, or minerals, including any assumed indebtedness. At the time of recording the instrument of transfer or conveyance, the consideration shall be stated, upon forms prescribed by the Oklahoma Tax Commission, and signed by the grantee, in accordance with the procedures prescribed by the Oklahoma Tax Commission.

"Deed" means any instrument or writing whereby realty or minerals are assigned, transferred, or otherwise conveyed to or vested in, the purchaser or, at his direction, any other person.

"Grantee" means the person receiving property.

"Grantor" means the person selling, giving or conveying the property.

"Mineral Deed" means the instrument which conveys a mineral interest in land.

"Mineral Interest" means the property interest created in oil or gas or other minerals by a mineral deed.

"Realty" includes those interests in real property, which endure for a period of time, the termination of which is not fixed or ascertained by a specific number of years; and, those interests enduring for a fixed period of years but which, either by reason of the length of the term or grant of a right to extend the term of renewal, consists of rights closely approximating interests in real property which endure for a period of time the termination of which is not fixed or ascertained by a specific number of years.

"Sold" means a transfer of interest for a valuable consideration, which may

involve money or any other item of value.

710:30-1-3. Purchase and affixing of documentary stamps

(a) Only documentary stamps shall be used in payment of the tax imposed by Oklahoma Statutes. The requisite stamps shall be affixed to the deed, instrument, or other writing by which the realty is conveyed. If there is insufficient space on the face of the deed, instrument, or other writing to affix the required documentary stamps, such stamps shall be affixed to a second or subsequent page of the document, or in the absence of a second or subsequent page, the stamps shall be affixed to the back of the deed, instrument, or other writing by which the realty is conveyed. It shall be the responsibility of the County Clerk to ensure that the page on which the stamps are affixed is recorded as part of the deed, instrument, or other writing conveying the realty.

[See: 68 O.S.1991, §3203(B)]

(b) Documentary stamps may be purchased, and requisite forms for the purchase of such stamps may be obtained, from the sources and in the manner provided for by statute. [See: 68 O.S.1991, §3204]

(c) If a taxpayer claims exemption from the payment of the documentary stamp tax, and there is no notation on the face of the deed indicating the reason for claiming the exemption, the county clerk shall make a brief notation on the face of the deed indicating the reason for claiming the exemption.

(d) If a single deed conveys property located in more than one county, the stamps will be purchased from, and the deed filed in, the county having the largest portion of the property. Certified copies of the deed showing the stamps affixed will then be filed in the affected counties.

[Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94; Amended at 11 Ok Reg 4689, eff 8-15-94 (emergency); Amended at 12 Ok Reg 2625, eff 6-26-95]

710:30-1-4. Documentary stamp tax based on consideration; interest; property

For purposes of computing the amount received in a transaction subject to the documentary stamp tax imposed by this statute no distinction is to be made between cash or security received by the seller.

(1) **Measurement.** The tax shall be measured by:

- (A) The consideration;
- (B) The value of the interest conveyed; or
- (C) The value of the property conveyed.

(2) **Basis.** In each instance the basis for computing the tax shall be:

- (A) The down payment; plus
- (B) The amount of new and assumed mortgages; plus
- (C) Any other valuable benefits received by the seller.

(3) **Personal property.** Any personal property transferred shall have its value deducted from the gross value transferred prior to computing the tax.

710:30-1-5. Use of documentary stamps on conveyances by defaulting mortgagee; exemptions

(a) Unless otherwise exempt, a conveyance by a defaulting mortgagee in consideration of the cancellation of the mortgage debt is subject to the documentary stamp tax based on the remaining balance plus accrued interest.

(b) Effective with deeds filed July 1, 1988 or subsequent, 68 O.S. 1988, Section 5102(13), now codified at 68 O.S.1991, §3202(13), was amended to exempt three categories of conveyances:

(1) **Deeds in foreclosure actions.** Deeds executed in a Foreclosure Action in which the grantee of the new deed was the mortgage holder of the property being foreclosed, and the property was deeded to the mortgagee for no additional consideration.

(2) **Deeds executed pursuant to a power of sale.** Deeds executed pursuant to a Power of Sale in which the grantee of the new deed was the mortgage holder of the property being sold and no additional consideration is exchanged.

(3) **Deeds in lieu of foreclosure.** Deeds accepted In Lieu of Foreclosure in which the grantee of the new deed was the mortgage holder of the property being conveyed to the mortgage holder for no consideration other than the cancellation of the debt and no additional consideration is exchanged. [**See:** 68 O.S.1991, §3202(13)]

[**Source:** Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94]

710:30-1-6. Examination of county records

Tax Commission auditors will periodically review deeds filed with each county clerk. The examinations shall consist of:

- (1) Extracting information concerning the amount of Documentary Stamp Tax paid;
- (2) Verifying the proper affixing of the Documentary Stamp;
- (3) Verifying the payment of the Documentary Stamp Tax;
- (4) Extracting information concerning nonpayment of the Documentary Stamp Tax;
- (5) Examination of the records of the county clerk concerning the administration of the Documentary Stamp Tax Act.

710:30-1-7. Assessment for nonpayment or insufficient payment; payment; protest

(a) **Assessment.** Any taxpayer filing a deed for record with a county clerk is responsible for either paying the required amount of documentary stamp tax or indicating in writing on the deed the authority for nonpayment. If after a review of the records, it appears that the taxpayer has failed to pay the tax, or has paid an insufficient amount of tax, or has failed to indicate the reason for nonpayment of the tax, the Commission shall:

- (1) Send a proposed assessment letter to the last known address of the taxpayer. The assessment letter shall contain the amount of delinquent tax, the penalty assessed, and a computation of the interest due.
 - (2) If there is no response within thirty (30) days of the mailing of the proposed assessment, the assessment will become absolute and final and a Tax Warrant will be issued by the Commission.
- (b) **Response to assessment.** In response to the assessment letter, the taxpayer may:
- (1) Submit a copy of the deed which shows that the proper amount of tax has previously been paid; or
 - (2) Proceed to the county clerk's office and pay the tax. If this is done, it is the taxpayer's responsibility to submit a copy of the deed with the properly affixed stamps. In addition, the taxpayer shall remit payment to the Commission for the amount of penalty and interest that has been assessed; or
 - (3) Submit proof of exemption from payment of the tax; or
 - (4) Protest the assessment. If a protest is presented to the Commission it will be forwarded to the General Counsel's office of the Oklahoma Tax Commission for disposition.
- (c) **Payments.** Two payments must be made for all delinquent documentary stamp taxes. The first in the amount of the tax will be made to the county clerk's office. The second, for penalty and interest will be made to the Oklahoma Tax Commission.

[Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94]

710:30-1-8. Property subject to the documentary stamp tax

- (a) All property transferred by deed that is not specifically exempted by statute is subject to the documentary stamp tax, and shall be paid by either the grantee or the grantor. Some examples of property which are subject to the tax are:
- (1) Mineral deeds;
 - (2) Sheriff's deeds. The tax is based on the amount bid for the property plus any other costs incurred by the purchaser. (See 710:30-1-5(b) for exception);
 - (3) A conveyance of realty in consideration of life maintenance. The tax will be based on the net value of the realty conveyed;
 - (4) Assumed and/or wraparound mortgages. The tax will be based on the balance of the mortgage plus any other valuable consideration exchanged;
 - (5) Realty traded. Documentary stamps will be required on both deeds if the deeds conveyed property. The tax will be based on the market value of the property conveyed; and
 - (6) Conveyance of property in forming a new corporation in exchange for stock of that corporation. The tax will be based on the original purchase price of the realty conveyed plus any improvements placed thereon since the original purchase. If the original purchase price can not be determined the

tax will be based on the fair market value of the property conveyed.

(b) The properties listed in (a) of this Section are examples only and are not intended to be all-inclusive.

[Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94]

710:30-1-9. Conveyances not subject to the documentary stamp tax

In addition to the exemptions allowed under 68 O.S.1991, §3202, the following nonexclusive list constitutes further examples of conveyances not subject to the documentary stamp tax:

- (1) Conveyances of realty without consideration, including a deed conveying property as a bona fide gift;
- (2) A conveyance given by an executor or executrix in accordance with the terms of a will;
- (3) A conveyance from an agent to his principal conveying realty purchased for and with funds of the principal;
- (4) True deeds of partition, unless, for consideration, some of the parties take shares greater in value than their undivided interests. In such a case, the tax will attach to the deed conveying such excess share and will be based upon the consideration for the excess;
- (5) Ordinary leases of real property;
- (6) A conveyance to a receiver of realty included in the receivership assets, and reconveyance of such realty upon termination of the receivership; and
- (7) Transfer of realty in a statutory merger or consolidation from a constituent corporation to the new or continuing corporation.

[Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94]

710:30-1-10. Duties and responsibilities of the county clerk

County clerks are responsible for selling Documentary Stamps to the taxpayers and have the duty of accounting for the stamps to the Oklahoma Tax Commission. For the purpose of collecting the stamp tax, the county clerks act as agents of the Oklahoma Tax Commission.

- (1) Documentary stamps are to be purchased only from the county clerk of the county in which the realty conveyed is located. If the property being conveyed by the deed is located in more than one county, the stamps will be purchased from the county in which the original deed is filed. Certified copies of such deed, showing stamps affixed, can then be filed with the other county or counties where the property is located.
- (2) In order to make a correct determination of tax due, the county clerks have the duty to request taxpayers to produce satisfactory documentation which correctly discloses the value of the property. The total value of the consideration paid can be determined from a real estate purchase contract,

closing statement, bill of sale, or any other documentation showing the total price of the property sold.

(3) County clerks shall make sure that the Documentary Stamps are not sold over the counter. The stamps can only be sold when the tax is paid and the stamps affixed to the deed. Stamps are to be sold only when the deed is offered for recording.

(4) County clerks shall make sure that the proper amount of stamps are affixed. Metering machines may not be used to collect an odd tax amount or, in other words, to collect an amount of tax that is not a multiple of .75 cents. Stamps worth .75 cents must be affixed for each \$500.00 (or any fractional part thereof) of the consideration. When a metering machine is used, a single stamp can be printed for the total tax amount rather than attaching multiple stamps. However, whether a metering machine is used or not does not change the tax amount. Thus .75 cents is still required for each \$500.00 of consideration or fractional part thereof. This can be illustrated by the following example: The selling price of Blackacre is \$30,250.00. Based on this consideration paid, the deed will require 61 documentary stamps at 75 cents each, which computes to a tax amount of \$45.75. It is improper to use a metering machine to calculate the tax on 60.5 documentary stamps, or \$45.38.

(5) If the taxpayer claims exemption from the payment of the documentary stamp tax, and there is no notation on the deed indicating the reason for the claiming of the exemption, the county clerk shall make a brief notation on the face of the deed indicating the reason for claiming the exemption.

[Source: Amended at 11 Ok Reg 3493, eff 6-26-94; Amended at 11 Ok Reg 3943, eff 7-11-94]