

Guidance Letter 09-001

NRS 375.010(1)(e)(2) Meaning and application of Nominal Consideration

Prepared by Nevada Department of Taxation
July 23, 2009

The guidelines suggested here are intended to assist the County Recorder and the taxpayer when determining whether reported consideration is nominal. The Department proposed a bright line test in draft regulations presented in February, 2009 for determining whether the reported purchase price represents nominal consideration. The proposed regulations have not yet been adopted by the Nevada Tax Commission. These guidelines are based on the original proposed language and comments during and subsequent to the workshop. These guidelines will expire upon adoption of permanent regulations. These guidelines are promulgated under authority of the Department to ensure that the tax imposed by NRS 375.023 is collected fairly and equitably in all counties. See NRS 375.019(1).

Introduction

NRS 375.020 requires the RPTT tax to be imposed on each transaction for “each \$500 of value.” “Value” is defined as “the amount of the full purchase price paid or to be paid for the real property.” NRS 375.010(1)(e)(1). Value for any deed with nominal consideration or without stated consideration, however, must be the estimated fair market value of the property. NRS 375.010(1)(e)(2). The issue county recorders face is whether the reported amount already represents fair market value of the property, or whether the amount reported is nominal consideration so that they can apply the appropriate statute. In a stable marketplace, the issue comes up infrequently, but in our current dramatic downward shift in the real estate market, with an increasing number of foreclosure sales and other distress-type sales, the issue has become more prominent.

Market value is generally defined as the most probable price, expressed in terms of money, that a property would bring if exposed for sale in the open market in an arm’s length transaction between a knowledgeable and willing seller and a knowledgeable and willing buyer, assuming that neither is under undue duress.¹ Of these elements in the general definition, NRS 375.010(2) specifically recognizes, or consolidates the elements, into two criteria: the transaction must be an open market sale and the sale must be between a willing buyer and a willing seller.

In litigation involving questions about market value, the courts have often relied on the rebuttable presumption that the sale price represents market value and is not established “under compulsion” or duress.² The Declaration of Value currently used in Nevada to collect transaction information, however, does not ask any questions of the taxpayer nor does the taxpayer make any affirmation as to whether the sales price reflects conditions requisite to a fair market value. The county recorder is often left with insufficient information about whether the reported sales price is reflective of fair market or nominal value for purposes of applying NRS 375.010(2).

To make matters even more difficult, there is currently no definition of “nominal” value in Nevada statutes or regulation regarding the real property transfer tax. Black’s Law Dictionary defines nominal consideration as “one bearing no relation to the real value of the contract or article, as where a parcel of land is described in a deed as being sold for “one dollar,” no actual consideration passing, or the real consideration being concealed.”³ A survey of real property transfer tax regulations in other states, however, suggests that nominal consideration occurs when the sales price of real property is

¹ International Association of Assessing Officers, *Property Assessment Valuation* (Chicago, 1977), p. 21. See also http://en.wikipedia.org/wiki/Fair_market_value; *The Appraisal of Real Estate*, 13th Edition, Appraisal Institute (Chicago: 2008), p. 22-23.

² *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1976); *Morris Epstein & others vs. Boston Housing Authority*, 317 Mass. 297 (February 7, 1944).

³ Henry Campbell Black, *Black’s Law Dictionary*, 4th Ed., (West Publishing: 1968) p. 380.

significantly less than its fair market value.⁴ For instance, when the deed or the declaration of value recites a sales price of “Ten dollars and other valuable consideration,” there is no relation to current market value. When this occurs, or if the real consideration is concealed, then the recorder may proceed to estimate the fair market value as defined in NRS 375.010(2). Other examples relating to foreclosure and other distress-type sales are discussed in Appendix II.

Nominal value determination

(See also “Quick Reference Guide” at page 8.)

Because there is currently no requirement for the taxpayer to provide information regarding the circumstances of a sale, there is a need to ensure a uniform method for determining “nominal consideration.” The Department recommends that the county recorders, taxpayers, and title companies in performance of their escrow agreements, perform an initial test to see if the reported purchase price is significantly less than current market value, using the county assessor’s taxable value as the measure. The test presumes that the purchase price represents nominal consideration when the total purchase price, including the assumption of debt, is equal to or less than 30 percent (30%) of the taxable value of the property established by the county assessor when the full title to the property is transferred. In order to perform the test, divide the total purchase price, including the assumption of debt, by the total taxable value established by the county assessor. If the result is 30% or less, the *presumption* is that the stated consideration represents nominal consideration. If the result is greater than 30% of the assessor’s taxable value, the purchase price is presumed to represent current market or actual value of the property.

As a demonstration, a recent property in Sagebrush County sold for \$48,170 and the assessor’s taxable value was \$141,520. On its face, the consideration paid is low compared to the assessor’s taxable value. Using these guidelines, the county recorder would inquire whether the \$48,170 represented current market or whether it bore no relation to the market. \$48,170 divided by the assessor’s taxable value of \$141,520 equals 34%. The determination would be that the actual consideration is not below the threshold of 30% and the reported consideration would be accepted as the amount to be taxed. If the consideration paid had been \$42,000, the calculation would be $\$42,000/\$141,520 = 29.67\%$. In that case, the presumption is that the consideration paid does not represent fair market value.

This test, however, does not preclude the possibility that upon audit or receipt of additional information, the original presumption may be overturned. Said another way, the presumption that a purchase price which is 30% or less of the total taxable value represents nominal consideration, is a *rebuttable* presumption. Similarly, a presumption that a purchase price which is greater than 30% of the total taxable value is not nominal consideration could also be overturned upon discovery of additional information which shows the purchase price was not reflective of fair market value.

When should the determination be made?

NRS 375.030(1) states that “if any deed evidencing a transfer of title subject to the tax . . . is offered for recordation, the county recorder shall compute the amount of the tax due and shall collect that amount before acceptance of the deed for recordation.” Based on this statute, the determination should be made prior to recording. In order to do so, county recorders are urged to work closely with title companies and other real estate professionals to educate taxpayers regarding the rebuttable presumption test, and what kinds of information can be presented when the deed is presented for recordation to show the sale is reflective of fair market value.

Comments during and after workshops on this topic from the Nevada Land Title Association and the Nevada Association of Realtors indicate the need to recognize the time-sensitive nature of loan

⁴ For instance, see: 32 V.S.A. SEC. 9601 (Vermont, REG. SEC. 1.9601); REG-52-002-06 (Nebraska).

documents and timely completion of the recording process. These groups have asserted the requirement to collect the right amount of tax must be balanced with the requirement in NRS 247.110:

1. When a document authorized, entitled or required by law to be recorded is deposited in the county recorder's office for recording, the county recorder shall:
 - (b) Record the document without delay . . .

The Nevada Tax Commission ruled on February 5, 1968, however, that collecting the tax "before acceptance of the deed for recordation does not conflict with NRS 247.110 which provides that any instrument, paper or notice *authorized by law to be recorded* or filed shall be recorded or filed without delay. The deed is *not authorized by law to be recorded* until the provisions of NRS 375.030 are complied with."

To recognize the competing public policies, NRS 375.030(3) provides:

3. If after recordation of the deed, the county recorder disallows an exemption that was claimed at the time the deed was recorded or through audit or otherwise determines that an additional amount of tax is due, the county recorder shall promptly notify the person who requested the recording of the deed and the buyer and seller of the additional amount of tax due.

The Department recommends that county recorders perform the nominal consideration test; and if the test indicates the purchase price should be presumed to be nominal consideration, ask for any additional information which would show the purchase price is reflective of current market value. If the taxpayer comes prepared with additional information, the analysis and determination should be performed prior to recordation. If the taxpayer cannot provide the additional information prior to a timely recordation, the county recorder should calculate the taxes due based on the reported purchase price in order to expedite the recording process, but should inform the taxpayer at the time of recordation that the transaction will be audited, and the taxpayer should expect an additional amount of tax will be due unless additional information is presented that would rebut the presumption that the reported purchase price represents nominal consideration. The Recorder should provide the taxpayer with a written notice of this process. See Appendix III for an example of a Notice of Audit.

The audit must be conducted pursuant to the requirements of NRS 375.120 through NRS 375.230. The county recorder may examine, without limitation, appraisals by licensed appraisers, closing and escrow documents, and listing agreements which would indicate whether or not the purchase price paid is reflective of fair market value.

Appendix I: Providing additional information

In order to overcome the presumption that a purchase price is nominal when it is equal to or less than 30% of the taxable value estimated by the assessor, additional information is needed. As noted above, NRS 375.010(2) requires that the transaction must be an open market sale and the sale must be between a willing buyer and a willing seller in order to be considered a fair market sale. Additional information would have to be sufficient to show these conditions are met.

An open market is one which is widely accessible to all potential buyers. Therefore, questions about how the property was marketed are pertinent to determining whether the sale was an open market sale. Information about whether the property was listed with a real estate agent, advertised in the newspaper, or a “for sale” sign was displayed on the property are helpful in determining whether the sale was on the open market. The amount of time the property was listed on the open market is also essential in determining whether the property was on the open market. “A sale is more likely to be arm’s-length if the time on the market is long enough to truly be exposed to that market.”⁵ For instance, if property is listed and sold on the same day, it is likely the sale is a private sale that does not represent open market. Financial institution re-sales where the property is only offered to a select list of buyers also do not meet the definition for open market.

Trying to determine whether the transaction is between a willing buyer and a willing seller is difficult. It usually comes down to a determination about whether the seller or buyer was under any compulsion or duress to sell or buy at a price less than market. As noted above, the courts generally presume that duress is not present in a sale, however, information about whether special or creative financing or sales concessions granted by anyone associated with the sale may indicate a need for further analysis.

The following items may indicate the presence of duress (the owner *must* sell):

- Indication that there was not a third party marketing agent (Sold by Owner).
- Time on market compared to similar property in the same market area is very short.
- “AS IS” sales or sales with a listing clause concerning buyer’s inspection and repairs.
- Listings that do not allow any contingencies or require quick closing date.⁶

Alternatively, in an adjudicated opinion, the Missouri State Tax Commission found some “distressed” sales could be considered reflective of the market. The Commission stated:

“Operational distress for a property caused by decreased demand in the market is distinguishable from the distress or duress that causes a buyer or seller to act atypically. It is the latter which disqualifies a sales transaction from consideration as an open market transaction indicative of a market-driven value.”⁷

Another court said that “A position of strength of one of the parties does not necessarily demonstrate that duress was present.”⁸ In other words, the financial difficulty of one party may not necessarily constitute “duress.”

⁵ International Association of Assessing Officers, IAAO SALES VERIFICATION & FORECLOSURE OUTLINE, (Feb., 2009) p. 9. <http://www.iaao.org/uploads/IAAOSalesVerificationv7.0.pdf>

⁶ International Association of Assessing Officers, IAAO SALES VERIFICATION & FORECLOSURE OUTLINE, (Feb., 2009) p.12. <http://www.iaao.org/uploads/IAAOSalesVerificationv7.0.pdf>

⁷ QUEENE ANNE HOSPITALITY et al v. JAMES STRAHAN, ASSESSOR, Taney County, Missouri, Case No. 01-89505 & 01-89506 etc., http://oa.mo.gov/stc/2003/queene_anne_hospitality_et_al_v.htm

⁸ Dublin City School District Bd. of Edn. v. Franklin Cty. Bd. Of Revision (March 7, 1996), Franklin App. No. 95APH06-718

The types of information that could be used to rebut the nominal consideration presumption include, but are not limited to:

- Appraisal by a licensed appraiser
- Listing agreement

Pursuant to NRS 645C.030, “appraisal” means an analysis, opinion or conclusion, whether written or oral, relating to the nature, quality, value or use of a specified interest in, or aspect of, identified real estate for or with the expectation of receiving compensation. Pursuant to NRS 645C.090, a licensed appraiser means an appraiser to whom a license has been issued pursuant to NRS Chapter 645. The appraisal would show an estimated value which could be compared to the actual sales price as a test of reasonableness as to whether the purchase price represents current market value. For instance, in the example from Sagebrush County, if the appraisal estimated the value to be \$50,000, then the actual sales price of \$48,170 would be supported as a reasonable test of current market value.

“Listing agreement” means a contract between a seller of real property and a real estate broker or principal real estate broker by which the broker has been authorized to act as an agent of the seller for compensation to offer the real property for sale or to find and obtain a buyer. The listing agreement would show the original asking price and subsequent modifications as well as the date the property was listed. The listing agreement is an indication the property was shown on the open market, whether the asking price was lowered in order to sell, and how long the property was on the open market. In some cases, however, the asking price is the sellers “dream price,” and can be far above the market value. High listing prices are more common in rural areas where there are few comparable sales, uncertainty about real estate value trends and poor real estate information.⁹ The comparison between the asking price and the actual selling price is also a test of reasonableness as to whether the actual selling price reflects market conditions.

A Broker Price Opinion (BPO) is defined as a “written analysis, opinion or conclusion that a person licensed pursuant to this chapter prepares for a person described in [SB 184], subsection 2 relating to the estimated price for a specified parcel of real property.” The same statute requires that a disclaimer be included with the BPO, to the effect that a BPO “is not an appraisal of the market value of the property. If an appraisal is desired, the services of a licensed or certified appraiser must be obtained.”¹⁰ Consequently, a BPO is not an acceptable substitute for an appraisal of market value for purposes of establishing market value for the real property transfer tax.

⁹ <http://www.chetboddy.com/Pages/costprice.html>

¹⁰ Statutes of Nevada, Chapter 371 (SB 184, 75th Session) 2009.

Appendix II: Examples of Transactions That May Not Reflect Market Value

In a highly depressed market where there are far fewer traditional market-driven arms-length sales and a significant number of foreclosure related sales, foreclosure related sales may need to be evaluated as reflective of current market value, particularly if they pull down the values of other sales and values in the area, or if they are the only properties selling in the area. Under these conditions foreclosure related sales may be so numerous that traditional market-driven arms-length sellers in an area are forced to lower their prices in order to sell their property.¹¹

Some of the types of foreclosure related sales include the following definitions from the International Association of Assessing Officers (IAAO):

Foreclosure

Foreclosure is a legal process that allows the lender to force the sale of a property, generally through a public auction, due to non-payment of a loan that is secured by that property. In some cases the lender retakes ownership of the property and is then allowed to sell the property in order to recover the outstanding amount and related costs.¹² After the completion of the foreclosure process the lender/mortgagee either has title to the property or the funds from its sale. If the lending institution is the successful bidder, the property becomes a lender asset called a REO (real estate owned), after which it may be marketed through conventional sales processes.¹³

Foreclosure Sale or Sheriff's Sale

This is an auction, where the property is sold to the highest bidder. In most cases the highest bidder is the bank/lender and the bid amount is the sum of the defaulted loan, plus interest and associated fees. In some jurisdictions even though there is a disclosure requirement, no sales instrument may be recorded.

Because the bank will bid up to the amount of the note plus fees and interest the sale price might be more than current market value. The sale may be considered valid if the sale is well attended and the purchase is made by a party other than the lender.¹⁴ However, prices derived at auction may not be an accurate indicator of resale market pricing where the pool of buyers is small because buyers must have cash on hand in order to bid.

The Department presumes that generally, if the bank is the purchaser in the auction, the conditions requisite to a fair market sale are not present. An appraisal for purposes of establishing fair market value from a licensed appraiser could overturn this presumption.

Deed-In-Lieu-of Foreclosure

Sometimes referred to as a "soft sale," this transaction occurs when the mortgagee and the mortgagor have agreed that "in lieu" of being foreclosed upon, the seller gives the deed to the lender. The property is typically transferred via warranty deed and the total purchase price is the amount of the loan in default, plus associated fees. The property then becomes the lender's property, without the lender having to incur the costs and time associated with going through the foreclosure process.¹⁵ That is why a deed-in-lieu of foreclosure is not considered an open market sale, because it was never exposed to the market and it is doubtful that the seller could be considered "willing."

- Transfers to a lending institution as a result of foreclosure, including trustee's deeds and receiver's deeds, are subject to calculation of the tax pursuant to NAC 375.150(3). This constitutes an exception to the general presumption discussed in this guideline.

¹¹ International Association of Assessing Officers, "Market Value Principles in a Time of Economic Crisis" (March 5, 2009), p. 6. http://www.iaao.org/uploads/FIReSales_3.pdf

¹² International Association of Assessing Officers, *IAAO SALES VERIFICATION & FORECLOSURE OUTLINE*, (Feb., 2009) p. 3.

¹³ International Association of Assessing Officers, *IAAO SALES VERIFICATION & FORECLOSURE OUTLINE*, (Feb., 20

¹⁴ International Association of Assessing Officers, *IAAO SALES VERIFICATION & FORECLOSURE OUTLINE*, (Feb., 2009) p.13.

¹⁵ International Association of Assessing Officers, *IAAO SALES VERIFICATION & FORECLOSURE OUTLINE*, (Feb., 2009) p.13.

Financial institution re-sale

A financial institution re-sale is a sale of property formerly foreclosed on by the financial institution (the seller will be a financial institution) or received by the institution through a deed-in-lieu of foreclosure. In these cases, the property is considered to be Real Estate Owned (REO) by a bank. The bank may sell these properties on an individual basis or as part of a group at auction. In many states the amount that the lender can sell the property for is limited by the fact that the lender cannot put themselves in a better position than they would have been if the loan had been paid off. This can lead to an asking price below the market.¹⁶ Check with the lending institution if this is the case.

Bank owned properties which have been offered in a public market may be considered to be reflective of fair market value unless there is information indicating the bank is under some sort of compulsion to sell. For instance, a bank may have to quickly shed an inventory of homes in order to be eligible for federal aid. If the nominal consideration test indicates the price is less than fair market value, then, again, the way to overcome the presumption is to provide an appraisal or other information showing that the conditions to a fair market sale have been met.

Short Sale

The most difficult type of sale to evaluate is a short sale. A short sale, sometimes referred to as a discounted payoff, is the sale of real estate where the total purchase price is less than the total amount owed against the real estate. The lender/bank is thus accepting less than the total amount owed by the borrower. The property is at some stage of the default process, possibly, but not necessarily, before the Foreclosure or Sheriff's Sale. The total purchase price is less than the mortgage amount, but not necessarily less than the value that would likely be obtained in an open market, arm's-length transaction. In a pre-foreclosure scenario, the parties are selling to avoid a formal foreclosure process. In the case of a post-foreclosure short sale the seller is selling to reduce the potential deficiency which occurs when the lender sells the property.¹⁷

The IAAO has stated that "Even though either situation likely involves duress and may lead to disqualification, merely identifying a transaction as a short sale is not evidence enough for qualification decisions. It is also imperative to note, while a short sale may involve a seller under duress, it also involves the approval of a lender that has the incentive to require a market price to limit their losses. This additional circumstance to a short sale makes it particularly important to evaluate the sale beyond one involving a more traditional distressed seller situation."¹⁸

One commentator has stated:

The current trend for listing agents of Short Sale listings is to dramatically lower the list price in order to get people to see their listing and hope to get some offers. However, the reality is that the list price is purely fictional as the listing agent knows that the bank will probably not accept an offer unless it is significantly above the current list price. The seller is willing to agree to any deal since they just want the property sold and don't care how much the lender gets for the property. Also with the current change in the tax laws, short sale sellers for the next 3 years no longer have to pay taxes on any forgiven mortgage debt.

It is unlikely that sufficient information would be offered by a taxpayer at the time of recording for the recorder to determine whether the sale is a short sale, let alone whether it is representative of market. Evidence of a short sale would be the agreement in writing of the bank to accept an amount less than the mortgage. Again, whether the sale is reflective of market value could be shown by an appraisal.

¹⁶ International Association of Assessing Officers, IAAO SALES VERIFICATION & FORECLOSURE OUTLINE, (Feb., 2009) p.14.
<http://www.iaao.org/uploads/IAAOSalesVerificationv7.0.pdf>

¹⁷ International Association of Assessing Officers, IAAO SALES VERIFICATION & FORECLOSURE OUTLINE, (Feb., 2009) p.12.
<http://www.iaao.org/uploads/IAAOSalesVerificationv7.0.pdf>

¹⁸ International Association of Assessing Officers, IAAO SALES VERIFICATION & FORECLOSURE OUTLINE, (Feb., 2009) p.12.
<http://www.iaao.org/uploads/IAAOSalesVerificationv7.0.pdf>

Quick Reference Guide

Nominal Consideration Test

Purchase price + assumed debt / Assessor's Taxable value = N%

If N is less than or equal to 30%, the stated consideration is presumed Nominal Consideration

If N is greater than 30%, the stated consideration is presumed Current or actual value

Example I

A property in Sagebrush County sold for \$48,170

The assessor's taxable value was \$141,520

On its face, the consideration paid appears low compared to the assessor's taxable value.

Using these guidelines, the county recorder would inquire whether the \$48,170 represented current market or whether it bore no relation to the market by making the following calculation:

$\$48,170 / \$141,520 = 34\%$.

34% is greater than 30%, therefore the stated consideration is presumed current or actual value and the amount to be taxed.

Example II

Same property in Sagebrush County sold for \$42,000

The assessor's taxable value was \$141,520

On its face, the consideration paid appears low compared to the assessor's taxable value.

Using these guidelines, the county recorder would inquire whether the \$42,000 represented current market or whether it bore no relation to the market by making the following calculation:

$\$42,000 / \$141,520 = 29.67\%$.

29.67% is less than 30%, therefore the stated consideration is presumed not to represent fair market value and to be nominal value. The value to be used for the tax is \$141,520.

Rebuttable Presumption

The Test does not preclude the possibility that upon audit or receipt of additional information, the original presumption may be overturned. Said another way, the presumption that a purchase price which is 30% or less of the total taxable value represents nominal consideration, is a *rebuttable presumption*. Similarly, a presumption that a purchase price which is greater than 30% of the total taxable value is not nominal consideration could also be overturned upon discovery of additional information which shows the purchase price was not reflective of fair market value.

Appendix III: Draft Notice of Audit

Date of Recordation: _____

Grantor: _____

Grantee: _____

Document #: _____

APN: _____

Book/Instrument: _____

Re: Notice of Audit for document recorded with a possible nominal value presumption.

This is a notice of audit for Real Property Transfer Tax on the above referenced transfer. Based on our analysis, the reported purchase price on the Declaration of Value appears to be less than fair market value and could be considered “nominal value” pursuant to NRS 375.010(1)(e)(2). The purchase price is presumed to be “nominal” if it is 30% or less of the taxable value established by the county assessor. The purpose of this audit is to verify whether the reported value of the property represents actual fair market value or whether it is nominal value. If the reported purchase price is nominal value, then the real property transfer tax must be recalculated based on the requirements of NRS 375.010(1)(e)(2).

Fair market value is defined as the estimated price the real property would bring on the open market in a sale between a willing buyer and a willing seller. If your declared value meets this definition, no further tax will be due. However, because the declared purchase price was 30% or less of the assessor’s taxable value, we presume the purchase price represents nominal value. In order to overcome the presumption that the purchase price was only nominal, we request additional information. Documents such as an appraisal or a listing agreement may show that the purchase price can be reasonably construed to represent fair market value. If you have either of these documents, please allow us to review them. We do not require a copy. If you do not have these documents but have other indications the purchase price is representative of fair market value, please provide them for review and we will consider that information.

The audit period will begin on the date of this notice and will end on _____. Please respond to this request for information within 30 days of the date of this notice. If there is no additional information to overcome the presumption that the declared value represents nominal value, then the audit may conclude that the amount of tax due will be \$_____. This amount of tax due is calculated using the higher of the county assessor’s taxable value or the last purchase price of the property if it occurred within the last five years.

This is important! If documentation supporting a conclusion that the declared value is fair market value, is not supplied and/or the transfer tax is not paid within the 30 days, the audit will be concluded and a lien will be recorded for non-payment of Real Property Transfer Tax. This means that in addition to the tax, you will incur a 10% penalty and interest at the rate of 1% per month from the date of recording to the time the amount of additional tax is collected, plus, a lien release fee of \$14.00 per release document. If the taxpayer extends the completion date, the interest will continue to accrue.

In order to avoid unnecessary expense, please provide the requested documentation or pay the tax due within the allotted time. If you have any questions, you may also contact us at the following number: (____) ____-____.

Please include this letter or a copy of this letter and your reply (supporting documentation or payment)

Mail it to:

Or fax it to (____) ____-____.

Payment may be made in the form of check or money order payable to _____.

Sincerely,

_____ County Recorder

Suggested Documentation for Review

- ☐ Appraisal by licensed appraiser
- ☐ Listing Agreement indicating purchase price is market value (includes information like asking price, time on the market, price decreases, etc.)
- ☐ "Sold by Owner" information (i.e. examples of advertising, "For Sale" pictures, etc.)
- ☐ Closing and/or Escrow documents
- ☐ Other



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MEMORANDUM

Date: February 18, 2010
To: All County Recorder Offices
From: Susan Lewis
Dept of Taxation
CC: Terry Rubald, Jackie Kelley

Subject: Value Verification vs Nominal Consideration; Taxed on Assessor's Taxable Value

It has been brought to the Department's attention that there may still be some confusion on the administration of "Nominal Consideration".

As mentioned in Department of Taxation Guidance Letter 09-001, the presumption that a purchase price which is 30% or less of the total taxable value represents nominal consideration, is a *rebuttable* presumption. The question is whether presentation of a purchase contract by a taxpayer is enough to rebut the presumption that the sales price was only nominal. Generally, a purchase contract by itself is not enough to overcome the presumption. A purchase contract generally does not show whether the transaction took place between a willing buyer and a willing seller on the open market. The purchase contract may show a willing buyer, but under conditions of a distress sale, it might not show whether the seller was willing or not. It only confirms that the price given is truly the price paid. As was mentioned in the Guidance Letter, "the county recorder may examine, without limitation, appraisals by licensed appraisers, closing and escrow documents, and listing agreements which would indicate whether or not the purchase price paid is reflective of fair market value." For instance, a listing agreement shows that the seller desired to sell on the open market at the price eventually paid and documented in the purchase contract. It also shows that there was exposure on the open market, that anyone could have purchased the property for the stated price. Thus, one or more of the items listed in Appendix I of the Guidance Letter should be presented in addition to the purchase contract. (See page 4 of the Letter).

If, after reviewing the purchase contract and the additional information made available by the taxpayer, the county recorder still finds the purchase price to be nominal, then NRS 375.010 (2) states that the estimated fair market value may be derived from the assessor's taxable value or the prior purchase price (within 5 years), whichever is higher. The recorder must review the last sale of the property and the assessor's records to make that determination.

Once it has been determined that the sales price is Nominal, then the tax is applied to Assessor's Taxable Value or the sale in the last five years as stated in NRS 375.010. It is not applied to the 30% of the Assessor's Taxable Value or to the sales price if they show you the purchase contract. Neither of these is acceptable as standard practice for applying RPTT to a nominal consideration sale.

If you have any other questions as to how to apply Nominal Consideration to a deed, please feel free to call Jackie at 684-2156 or myself at 684-2027.