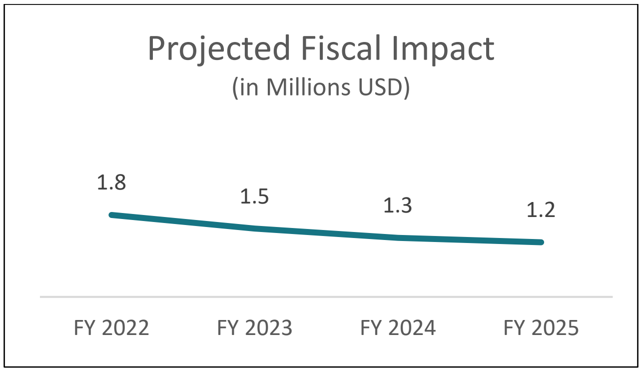
Deed Transfer Tax Exemptions

Tax Expenditure Initial Review – TEB 10.01 to 10.06

Tax Expenditure Facts

Years Enacted	1961-1997
Statute	Minn. Stat. § 287.22
Tax Type	Deed Transfer
Provision Type	Exemptions
Fiscal Impact Estimate	$1,300,000 (All Exemptions) – Fiscal Year 2024
Claims Estimate	Direct measure of this estimate is not currently available
Expiration Date	None



Note: The graph shows the combined fiscal impact of exemptions listed in Table 1.

Tax Expenditure Description

The State of Minnesota imposes a tax when real estate is granted, assigned, transferred, or otherwise conveyed by deed or instrument.[i] The following types of property transfers or sales are exempted from the deed transfer tax pursuant to M.S. 287.22. Note that several exemptions listed in statute do not meet the criteria of a tax expenditure and are therefore excluded from the tax expenditure budget and this review.

Table 1: Deed Transfer Tax Exemptions

TEB	Tax Expenditure Description	Year Enacted	Fiscal Impact FY24
10.03	A deed transferring one or more cemetery lots is exempt.	1961	$100,000
10.02	A deed of distribution by a personal representative is exempt. This type of transaction commonly occurs during the probate process to settle a decedent's estate.	1975	< $50,000
10.01	A deed to or from a co-owner partitioning undivided interest in the same piece of property is exempt. For example, tenants in common agree that each tenant will be assigned particular tracts of land within a jointly owned property.	1984	< $50,000
10.04	A deed or other instrument issued pursuant to a Permanent School Fund land exchange is exempt. Subject to the Minnesota Constitution, M.S. 92.122, and related statutes, school trust land may be exchanged in order to improve management, reduce costs, compensate for diminished revenues, or improve future revenue potential.	1991	< $50,000

10.05	A sheriff's certificate of sale or a certificate of redemption given to the mortgagor in a mortgage or lien foreclosure sale is exempt.	1993	$900,000
10.06	Real estate conveyed pursuant to a decree of marriage dissolution is exempt.	1997	$300,000

Additional Background Information

The current deed transfer tax rate is 0.33% of consideration (the price paid for the real property, including the fair market value of any land exchanged) when the consideration exceeds $3,000. When consideration is equal to or less than $3,000, no consideration is given, or the transfer is made pursuant to a consolidation or merger, a minimum flat tax of $1.65 applies. For reference, the difference between an instrument taxed at the minimum rate and one that is marginally above the minimum threshold ($3,001) is $8.25.

The deed transfer tax was originally enacted in 1961 at a rate of $1.10 for consideration of $1,000 or less plus 55¢ for each $500 in excess of $1,000. In 1987, the rate was changed to $1.65 for consideration of $500 or less plus $1.65 for each additional $500. In 2001, the tax was restated as 0.33% of consideration (the equivalent of $1.65 per $500) when the consideration exceeded $500. If consideration was $500 or less, a minimum tax of $1.65 applied. In 2019, the minimum tax threshold was changed from $500 to $3,000.

Chapter 287 was recodified in 1999 making technical changes, eliminating outdated language, adding definitions, clarifying language, and arranging provisions in a more logical order. Of note for this review, the term "consideration" was defined, the definition of "real property" as applied to the deed tax was clarified, and the determination of tax liability was clarified.[ii]

The tax is paid by the seller to the county treasurer when the deed is recorded.[iii] For example, a residential property purchased for $250,000 would incur a deed tax liability of $825 ($250,000 * .0033). Each county remits 97 percent of revenues to the state for deposit in the general fund. The county retains the remaining three percent to cover administrative expenses.

Beneficiaries of deed transfer tax exemptions include persons or entities that convey real estate by a deed or instrument listed in Table 1.

Proposed Tax Expenditure Objectives for Consideration

Five of the six deed tax exemptions identified in the Tax Expenditure Budget and shown in Table 2 are clarifications that help define the tax base. Put another way, these exemptions help answer who or what is subject to the deed tax. The exemption for exchanges of Permanent School Fund (PSF) lands is intended to help ensure maximum financial return consistent with PSF goals and fiduciary responsibilities specified in statute and in the Minnesota Constitution.

Table 2: Deed Tax Exemption Objectives

Exemption	Public Policy Objectives
Cemetery Lots	▪ Define the tax base for the application of the deed transfer tax.
Distributions by Personal Representatives	▪ Define the tax base for the application of the deed transfer tax.
Property Partitioned between Co-Owners	▪ Define the tax base for the application of the deed transfer tax.

Exchange of Permanent School Fund Lands	▪ Help ensure the Permanent School Fund secures maximum financial return consistent with fund goals stated in M.S. 127A.31 and fiduciary responsibilities imposed by Article 11, Section 8 of the Minnesota Constitution.
Mortgage and Lien Foreclosure Sales	▪ Define the tax base for the application of the deed transfer tax.
Decree of Marriage Dissolution	▪ Define the tax base for the application of the deed transfer tax. ▪ Lessen the financial burden on individuals undergoing divorce proceedings.

Sources

The recorded legislative history associated with deed tax exemptions is limited and does not directly identify intended public policy objective(s). The objectives identified in this report are based on a review of statute language and archived legislative committee discussions.

Minnesota statutes 287.21 imposes the deed tax on "each deed or instrument by which any ***real property*** in this state is granted, assigned, transferred, or otherwise conveyed. The tax applies against the ***net consideration***" (emphasis author).

- Minnesota statutes 287.20, subdivision 7 defines real property as "any fee simple estate, and any estate for life, as defined in chapter 500."
- Minnesota statutes 287.20, subdivision 2 defines consideration as "the total monetary value given in return for a conveyance of real property including all lump-sum payments, all prior or future installment payments that are required under the agreement between the parties, and the fair market value of any property taken, or to be taken, in exchange" less the amount of any liens or encumbrances that remain on the property at the time of sale that are not removed as a result of the sale.
- Minnesota statutes 287.20, subdivision 7 defines partition as "the division by conveyance of real property that is held jointly or in common by two or more persons into individually owned interests. If one of the co-owners gives consideration for all or a part of the individually owned interest conveyed to them, that portion of the conveyance is not a part of the partition."

The construction of statute language and archived legislative committee discussions suggest that deed taxes are intended to be applicable to voluntary conveyances of real estate with full ownership rights between unaffiliated parties (the grantor and grantee do not share an existing interest in the property). If this assumption is correct, then the deed tax exemptions identified in the Tax Expenditure Budget, with the exception of Permanent School Fund land exchanges, may function to define the tax base.[iv]

A cemetery lot does not meet the definition of real property because lot ownership rights are limited – it can be used for burial purposes only – compared to a fee simple estate, which represents the maximum ownership interest that is allowed under law. The Minnesota Supreme Court has described cemetery lot ownership interest as "a kind of perpetual easement" or "a special kind of perpetual license or privilege."[v]

Real estate partitioned between co-owners or distributed pursuant to a decree of marriage dissolution does not involve the transfer of real estate from one party to another, but the division of an existing interest shared by both parties. An additional or alternative objective of the exemption for real estate conveyed pursuant to a decree of marriage dissolution may be to lessen the financial burden on individuals undergoing divorce proceedings.

Conveyance of real estate by deed of distribution from a personal representative, a certificate of sale from a mortgage or lien foreclosure sale, or a certificate of redemption from a mortgage or lien foreclosure sale is not considered a voluntary transfer for the purposes of the deed tax. These instruments would not be used but for events (death of the property owner or loan default) the property owner, mortgagor, or mortgagee would presumably avoid if another alternative were possible.

The deed tax exemption for Permanent School Fund (PSF) land exchanges helps ensure the fund secures maximum financial return consistent with PSF goals and fiduciary responsibilities specified in statute and the Minnesota Constitution. The effective transfer of financial resources from the PSF to the General Fund that would occur but for this exemption may be considered an unintended consequence of the Minnesota deed tax that is remedied by the exemption.

Potential Metrics and Performance Measures

Conveyances of real estate that fall within one of the five exemption categories discussed above are not subjected to the deed tax, therefore the exemptions are achieving their objective of defining the tax base.

The deed tax exemption for Permanent School Fund land exchanges reduces a cost associated with land management that would exist but for the exemption, thus furthering PSF goals and fiduciary responsibilities specified in statute and the Minnesota Constitution.

Contact Information and Disclaimer

This tax expenditure review was prepared by the Legislative Budget Office for the Tax Expenditure Review Commission pursuant to Minnesota Statute, section 3.8855, subdivision 4.

Notice: Proposed tax expenditure objective statements are not binding authority and should not be used as a legal interpretation of any tax expenditure statute.

For questions regarding this review, please contact the Legislative Budget Office at 651-297-7146 or lbo@lbo.mn.gov.

For more information, please visit the [Tax Expenditure Review Commission website].

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[i] Descriptions of deed tax exemptions in this review may differ slightly from the Tax Expenditure Budget for explanatory purposes.

[ii] Laws of Minnesota 1999, chapter 31.

[iii] Minnesota Statutes 2022, section 287.24.

[iv] For a brief discussion on the Decree of Marriage Dissolution exemption, see Minn. Sen., Hearing on S.F. 493 before the Sen. Comm. On Taxes, 80th Minn. Leg., Reg. Sess. (April 8, 1997), available at https://www.lrl.mn.gov/media/file?mtgid=801295 (audio media, file 2/2). For a brief discussion on mortgage or lien foreclosure sale exemptions, see Minn. Sen., Hearing on S.F. 585 before the Sen. Property Tax Division, 78th Minn. Leg., Reg. Sess. (March 10, 1993), available at https://www.lrl.mn.gov/media/file?mtgid=780787 (audio media).

[v] Erickson v. Sunset Memorial Park Ass’n, 259 Minn. 532, 108 N.W.2d 434 (Minn. Supreme Court 1961).