# DEED TRANSFER TAX IN NOVA SCOTIA

## *Nature of Deed Transfer Tax*

Deed transfer tax is triggered by the transfer of real property and is payable by the person to whom the interest in real property is transferred.

## *Authority to Levy Tax*

Deed transfer tax cannot be levied without statutory authority. In Nova Scotia, the tax is levied either by or pursuant to an Act of the Nova Scotia Legislature. Thus, the tax is levied on the grantee, since the Province has constitutional authority to levy direct taxes only. If the tax were levied on the grantor, it would probably amount to an indirect tax, and only the Parliament of Canada has the constitutional authority to levy indirect taxes.

The statutory authority cannot be found in one Act; it is contained in several Acts and in order to determine the exact terms of the statutory authority with respect to a particular tax it is necessary to determine

(a) whether the tax is levied directly by, and payable to, the Province or is payable to, a municipality; and

(b) if it is payable to a municipality, which municipality is claiming the tax.

It is most important to determine which piece of legislation applies to a particular deed transfer tax since the legislation is not uniform and, indeed varies in several fundamental respects, including the rate of the tax.

Where the tax is a Provincial tax, that is, a tax levied directly by the Legislature and payable directly to the Province, then the statutory authority for the tax is Part II of the *Deed Transfer Tax Act*, R.S.N.S. c. 1989. This imposes a tax, payable to the Province, on every deed of two per cent of

(a) the sale price of commercial property thereby conveyed; and

(b) the amount, if any, by which the sale price of residential property thereby conveyed exceeds one hundred thousand dollars.

If, however, the tax is being levied by a municipal unit then, in order to identify the relevant legislation respecting the tax, one must determine whether the tax is being levied by

(a) the City of Halifax;

(b) the City of Dartmouth;

(c) the City of Sydney;

(d) Halifax County Municipality (formerly known as the Municipality of the County of Halifax);

(e) any other municipal unit other than the City of Halifax, the City of Dartmouth, the City of Sydney, Halifax County Municipality, and also other than the Town of Bedford; or

(f) the Town of Bedford.

In the case of the City of Halifax, the authority for the tax is Section 253 of the *Halifax City Charter*, which is an Act of the Legislature, being Chapter 52 of the Acts of 1963 and which authorizes the Halifax City Council to impose the tax by ordinance. A copy of this legislation is attached to this paper and marked Schedule "A". However the details of the deed transfer tax are to be found in the Ordinance of the City, passed pursuant to this authority. A copy of this Ordinance is attached to this paper and marked "Schedule B". It should be noted that the City does not have any authority to increase the rate beyond two per cent of the sale price, since Section 253 of the *Halifax City Charter* provides that the tax to be levied by the ordinance authorized by that Section "shall not exceed two per cent of the sale price, as defined in such ordinance".

Like the Halifax deed transfer tax, the Dartmouth deed transfer tax is levied by a by-law purusant to legislative authority, namely Section 227 of an Act of the Legislature entitled the *Dartmouth City Charter*, being Chapter 43A of the Acts of 1978. A copy of this legislation is attached to this paper and marked Schedule "C" and a copy of the Dartmouth deed transfer tax by-law is attached to this paper and marked "Schedule D". And, like the *Halifax City Charter*, the *Dartmouth City Charter* does not authorize the imposition of a tax of more than two per cent. Thus, like the Halifax tax, the Dartmouth tax cannot be increased beyond two per cent without an Act of the Legislature amending the *Dartmouth City Charter*.

And like the Halifax and Dartmouth deed transfer taxes, the Sydney deed transfer tax is levied by a by-law made pursuant to legislative authority, namely the *Sydney City Charter*, being Chapter 174 of the Acts of 1903; however, unlike the Halifax and Dartmouth City Charters that authorize a tax not exceeding two per cent of the sale price, the City of Sydney is limited to a tax not exceeding one per cent of the sale price. Copies of the relevant statutory authority and ordinance are attached to this paper and marked Schedules "E" and "F".

Up until August 12, 1992, the Municipality of the County of Halifax (now the Halifax County Municipality) collected deed transfer tax pursuant to Chapter 85 of the Acts of 1960, entitled the *Halifax County Deed Transfer Tax Act*, which was a special piece of legislation and which, unlike the Halifax and Dartmouth legislation, directly imposed a tax of one and one quarter per cent payable to the Municipality of the County of Halifax rather than authorize the Municipality to levy the tax by by-law. However, with the coming into force of the *Halifax County Charter* (Stats., N.S., 1992, c. 63) on August 12, 1992, the authority for the tax is now found in Part IX of that Act. Like the previous 1960 legislation, this enactment imposes directly on each transfer a tax of one and one-quarter per cent of the value of the property to which it relates and provides that the tax is payable to Halifax County Municipality.

If one is dealing with a deed transfer tax collected by any municipal unit in the Province other than the Cities of Halifax, Dartmouth and Sydney, Halifax County Municipality or the Town of Bedford, one must look at Part I of the *Deed Transfer Act*, R.S.N.S., 1989.

First of all, Part I provides that it does not apply to a municipality unless the municipality, by by-law, makes it apply to that municipality. Accordingly, with respect to such a municipal unit one must first check and see whether Part I is, in fact, in force with respect to that municipality. Attached to this paper and marked "Schedule G" is a list prepared by the Department of Municipal Affairs which shows each municipality that has passed a by-law making Part I of the *Deed Transfer Tax Act* apply to it. The list is as of August 18, 1992.

Details of the tax can be found, however, not in the by-law but rather in Part I itself. It imposes a tax of one-half of one per cent of the value of property conveyed and makes the tax payable to the municipality within which the property lies.

However, if one is dealing with the tax levied by the Town of Bedford, the situation is, again, different. It will be recalled that until 1980, what is now the Town of Bedford was part of the Municipality of the County of Halifax and, thus, deed transfer tax was collected pursuant to the *Halifax County Deed Transfer Tax Act* by the Municipality on lands located in what is now the Town of Bedford. However, in 1980 the Town of Bedford was incorporated, and in 1987 special legislation, entitled the *Bedford By-laws Act* (Stats. N.S., 1987, c. 58) was passed by the Legislature to accommodate this change. This legislation, as amended by Chapter 56 of the Acts of 1989, provides that the *Deed Transfer Tax Act* applies within the Town of Bedford but provides that unlike the tax rate levied by that Act the tax rate is one per cent on single family dwellings where the sale price is less than $100,000 and one and one-quarter per cent in all other cases.

As already pointed out, these various pieces of legislation differ in some important respects. As has already become apparent, they provide for different rates. Although time does not permit a detailed comparison of these pieces of legislation, one example of a fundamental difference amongst them is that the *Deed Transfer Tax Act* exempts property transfers between a wholly-owned subsidiary company and its parent and between companies that are wholly owned by another company or person, while the deed transfer tax provisions in the *Halifax County Charter* and the deed transfer tax ordinance and by-laws of the Cities of Halifax, Dartmouth and Sydney do not.

Another example of a fundamental difference is with respect to what deeds are subject to tax. The *Deed Transfer Tax Act* covers any instrument or writing, not testamentary in character, whereby property, is conveyed, transferred, assigned or vested in any person, but excludes a mortgage, an agreement of sale, a lease for a term of less than twenty-five years or a deed given by a clerk in pursuant of a sale for rates and taxes. Therefore, a transfer is not subject to tax under Part I of the *Deed Transfer Tax Act* if it is a mortgage, an agreement of sale, a lease for a term of less than twenty-five years or a deed given pursuant to a tax sale. However, the deed transfer tax ordinance and by-laws of Halifax, Dartmouth and Sydney exempt mortgages, all leases, notwithstanding their term, but do not exempt agreements of sale or tax deeds. It would also appear that the definitions in the *Deed Transfer Tax Act* and the deed transfer tax ordinance and by-laws of the Cities of Halifax, Dartmouth and Sydney would, technically, attract tax on such conveyances as grants of easement. However, as a matter of practice, tax has been levied only on conveyances of the fee simple or the equity of redemption.

Let us now examine the manner in which the tax is triggered and to whom it is payable.

*Triggering of Tax*

What conditions must exist before the tax is payable?

All the enactments provide (with slightly different wording in each) that the tax is payable on a deed which conveys real property located within the municipality in question.

Accordingly, before tax is attracted, the land in question must be located in the municipality in question or, in the case of Part II of the *Deed Transfer Tax Act*, the Province and

(a) there must be a deed;

(b) the deed must be effective to convey real property; and

(c) the deed must be given pursuant to a sale.

If there is a deed, the deed must be effective to convey an interest in real property before the tax is attracted. In *Director of Assessment (N.S.)* v. *Keddy* (1991), 108 N.S.R. (2d) 275, the Appeal Division held that for the purposes of the *Deed Transfer Tax Act* there is no conveyance until one party is divested of an interest and the other party vested with the interest.

Accordingly, the tax does not become payable until the conveyance is delivered. Thus, if a deed is held in escrow and is later fully delivered, the tax is triggered on, and not before, delivery of the deed from the escrow.

All the enactments provide that the tax is to be calculated on the "value" of the property conveyed and all the enactments define "value" as the "sale price".

However, the definitions of "sale price" in the *Deed Transfer Tax Act* and the *Halifax County Charter* on the one hand, and the Halifax, Dartmouth and Sydney ordinance and by-laws, on the other are not the same.

Clause 2(k) of the *Deed Transfer Tax Act* and clause 105(g) of the *Halifax County Charter* provide that

> "sale price" means the entire consideration for the sale of the property and, without restricting the generality of the foregoing, includes
>
> (i) money consideration paid together with the par or face value of promissory notes, cheques, bills of exchange, agreements and securities forming part of the consideration,
>
> (ii) the gross value of real or personal property given in exchange in whole or in part, including mortgages made by the grantee in favour of the grantor or his executor, nominee, assignee, trustee or anyone on his behalf,
>
> (iii) outstanding obligations or accounts cancelled, assumed or satisfied,

(iv) the amount of rates, taxes, liens, mortgages and encumbrances, including interest and expenses thereon assumed by the grantee at the date of transfer.

On the other hand, the by-laws and ordinances of the three Cities define "sale price" as meaning "the gross price of the real property transferred which shall be the sum of the actual cash paid, property exchanged, given or bartered, past obligations cancelled or satisfied, purchase money obligations given, if any, and the real amount of all liens, mortgages and other encumbrances under and subject to which the sale is made".

The first question which must be asked is whether there must be a sale in the ordinary sense of the word in order to attract tax or whether tax is attracted by any transaction which amounts, technically, to a sale.

In *Eastern Management Limited* v. *City of Halifax* (1971), 2 N.S.R. (2d) 361 the question was whether a conveyance from a company to a shareholder, preparatory to the winding up of the company, attracted tax and the Appeal Division held, in that case, that the important question is whether anything was being given by the shareholder in return for the conveyance. The Court found that the shareholder was legally entitled to share *pro rata* in all the assets of the company but gave this right up in return for the conveyance of the particular property in question. The Court held that therefore, the transaction amounted to a "sale" and that tax was payable.

It appears, therefore, that tax will be attracted even if the sale is not a sale in the ordinary sense of the word but a sale in the technical sense; that is, a transaction in which consideration of any type moves from the grantee to the grantor. In 1989, Hallett, J of the Trial Division of the Supreme Court (as he then was) had before him a similar situation in *Markborough Properties Limited* v. *Dartmouth* (1989), 94 N.S.R. (2d) 438. There, a wholly-owned subsidiary of Markborough Properties Limited was being dissolved and preparatory to the dissolution certain property was conveyed to Markborough Properties Limited, including the Mic Mac Shopping Centre. The Court distinguished *Eastern Management Limited* v. *City of Halifax (supra)* on the grounds that here Markborough Properties Limited was not giving anything up in return for the conveyance but was taking a conveyance to which it was already legally entitled pursuant to the *Companies Act*.

It appears, therefore, that the key as to whether there is a "sale" that would attract tax is whether the transaction involves any consideration, including consideration of a technical nature, moving from the grantee to the grantor.

Let us know examine some practical questions that arise with respect to the various pieces of deed transfer tax legislation.

*Problem 1*

Every one of the deed transfer tax enactments I have described provides that the unpaid tax forms a lien on the property to which it relates. Accordingly, should not the solicitor for a purchaser make sure that each deed in the chain of title bears a stamp showing the tax has been, in fact, paid or that no tax is payable?

*Problem 2*

Suppose Grandfather Jones decides to sell property to his granddaughter and that the property is worth $150,000.00. Suppose Grandfather Jones and the granddaughter are aware that if this was a gift from a grandfather to granddaughter there might not be any tax. Further assume that the granddaughter files a false affidavit, what are the consequences? What if the lawyer has signed the affidavit for the parties, fully believing it to be a gift when, in fact, consideration was paid? Is the lawyer liable for the deed transfer tax? If this occurs in any municipality, other than the Cities of Halifax, Dartmouth or Sydney, then the penalty, on summary conviction, can be as high as $500.00, and in default of payment, to imprisonment for a term not exceeding three months, together with liablity to pay the amount of the tax together with interest in penalty that should have been paid upon the deed. In the case of the Cities the penalty is up to a maximum of three hundred dollars. And, under the *Deed Transfer Tax Act* if the lawyer has completed the affidavit, the lawyer is liable jointly and severally with the grantee for payment of the amount of the tax (*Deed Transfer Tax Act*--s. 9(3) and 16E(3).

*Problem 3*

Suppose John and Mary are a married couple who are in the throes of matrimonial troubles. Suppose Mary agrees to transfer her interest in the property under the terms of the separation agreement/minutes of settlement. Is there a deed transfer tax owed on this transfer?

Section 4(2) of the *Deed Transfer Tax Act* and Section 112(1) of the *Halifax County Charter* state that a deed that transfers property between persons married to one another is exempt from tax. The deed transfer tax ordinances and by-laws of the Cities of Halifax, Dartmouth and Sydney contain no such exemption but the Section of the *Deed Transfer Tax Act* that provides for such an exemption from the deed transfer tax levied pursuant to the *Deed Transfer Tax Act* provides as follows:

> "Notwithstanding Section 3 or any enactment, this Section applies to every municipality that under the authority of this Part *or any other Act* (italics mine) levies a tax of the kind permitted by this Part."

Thus, there would be no tax payable, regardless of the municipality in which the land is situate.

Nor would it make any difference if the court ordered the wife to transfer her interest in the property to the husband because the conveyance is still between persons who are married to one another.

*Problem 4*

Grandfather Jones is getting old and has agreed to transfer title to his property to his daughter. There is no mortgage on the property and there is no cash consideration for the transfer, except the daughter has agreed to move into the house and take care of Grandfather Jones during his twilight years. Since the daughter is providing the services over the next number of years, is there deed transfer tax owing?

Since the tax is calculated on the basis of the value of the property and since the value of the property is the sale price, in order to determine this question it is necessary to determine whether or not there was a "sale price".

"Sale price" is defined both in the *Deed Transfer Tax Act* and in clause 105(g) of the *Halifax County Charter* as follows:

> "Sale price" means the entire consideration for the sale of the property and, without restricting the generality of the foregoing, includes
>
> (i) money consideration paid together with the par or face value of promissory notes, cheques, bills of exchange, agreements and securities forming part of the consideration,
>
> (ii) the gross value of real or personal property given in exchange in whole or in part, including mortgages made by the grantee in favour of the grantor or has executor, nominee, assignee, trustee or anyone on his behalf,
>
> (iii) outstanding obligations or accounts cancelled, assumed or satisfied,
>
> (iv) the amount of rates, taxes, liens, mortgages and encumbrances, including interest and expenses thereon assumed by the grantee at the date of transfer.

The only obligation of the daughter is to move in and take care of the grandfather, thus, there is not a sale price within the meaning of subclauses (i), (ii), (iii) or (iv). However, these are merely examples and the lead words include within the meaning of "sale price" the "entire consideration for the sale of the property".

If the property were located outside the three cities, it could be argued, therefore, that a value would somehow have to be placed on the services of the daughter and the amout of the tax would be calculated on that value.

A counter-argument, of course, is that the words "the entire consideration for the sale of the property" presume a sale in the ordinary sense of the word and here there was no sale.

All I can do is state both arguments, but I would prefer not to express any further opinion on this problem.

However, if the property were located within one of the Cities, I do not think tax would be payable, since the ordinance and by-laws confine "sale price" to "the actual cash paid, property exchanged, given or bartered, past obligations cancelled or satisfied, purchase money obligations given, if any, and the real amount of all liens, mortgages and other encumbrances under and subject to which the sale is made."

*Problem 5*

Suppose Mr. Bachelor owns a property with a mortgage on it. After mortgaging his property, he meets a young lady. He decides to transfer title to the property in his name and the lady's name as joint tenants. This truly is a gift to the young lady insofar as she has not paid anything for the deed other than the token one dollar consideration. Is there deed transfer tax owing on this transfer due to the fact that she may be liable under the terms of the mortgage?

Would it make a difference whether or not she signs an assumption agreement to assume the payments? Would it make any difference if she was his wife and not just a friend?

Both the *Deed Transfer Tax Act* and the *Halifax County Charter* exempt from deed transfer a deed that transfers property

(a) between persons married to one another; or

(b) by way of gift, notwithstanding that

(i) the deed transfer property subject to an encumbrance due to a mortgage or a lien for rates and taxes and the grantee assumes the amount of the encumbrance, including interest and expenses thereon, or

(ii) there is a nominal consideration therefor,

and it will be recalled that the *Deed Transfer Tax Act* makes this exemption apply to the Cities of Halifax, Dartmouth and Sydney.

Since the conveyance was by way of a gift and only nominal consideration was given therefor, the deed is, without doubt, exempt from deed transfer tax and since the Act specifically states that the exemption applies notwithstanding the property is conveyed subject to an encumbrance and that the grantee assumes the amount of emcumbrance, it would therefore not make any difference that the lady in question signed an assumption agreement respecting an existing mortgage, or any other encumbrance, including taxes, for that matter.

*Problem 6*

Mr. Purchaser buys Lot 35. After buying Lot 35, he realizes that he should have purchased Lot 36. The vendor then agrees to exchange lots. The purchaser reconveys Lot 35 to the original vendor and the vendor, in return for that lot, conveys to the purchaser lot 36. Is there is deed transfer tax on this transaction?

If the agreement of purchase and sale was originally for Lot 36 and the purchaser, after completing the sale suddenly realizes he or she has made a mistake and that he or she should have purchased Lot 35, then it is my view that he must pay deed transfer tax on Lot 35 since "sale price" as defined in the *Deed Transfer Tax Act* in the *Halifax County Charter* and the Halifax, Dartmouth and Sydney ordinances and by-laws includes within the definition of "sale price" the gross value of real or personal property given in exchange in whole or in part. However, if it could be shown that the parties always intended that Lot 35 and not Lot 36 was the subject-matter of the sale, then it could be argued that the conveyance is given to correct a deed previously given and therefore is exempt under Section 7(1) of the *Deed Transfer Tax Act* which provides as follows:

7 (1) Where

(a) a deed merely confirms, corrects, modifies or supplements a deed previously given;

(b) there is no consideration therefor beyond one dollar; and

(c) it does not include more property than the deed previously given,

it is exempt from the tax.

The *Halifax County Charter* and the ordinances and by-laws of the three Cities also contain this exemption.

*Problem 7*

Mr. Purchaser is purchasing a property which is being used by the vendor as a corner store. Mr. Purchaser does not intend to use the property as a corner store, but intends to live in it. This makes quite a difference with respect to deed transfer tax since if, in this situation, the property is "commercial" within the meaning of the *Assessment Act*, then a two per cent deed transfer tax would be payable to the Province on the entire purchase price, while if the property is residential, then the tax would be payable only on the amount by which the purchase price exceeds $100,000.

In *Director of Assessment* v *Keddy (supra)*, the owner of more than fifty thousand acres of woodland in the Province conveyed some woodlots to the purchaser, but even after the conveyance of the woodlots in question, the purchaser would own less than fifty thousand acres of woodlands in the Province.

The *Assessment Act* defines commercial proprty as including forest property owned by a person who owns fifty thousand acres or more of forest property in the Province, but excludes forest property from the definition of "commercial property" where the person who owns the property owns less than fifty thousand acres of forest property.

Freeman, J.A., speaking for the Appeal Division said this at page 277 in concluding that the property is not "commercial property":

". . . the essence of a conveyance is that something, a property right, be transferred from one owner to another; it is not conveyed unless the original owner is divested of it and the new owner is vested with it. If land in the hands of a new owner lacks a characteristic it had in the hands of the previous owner, that characteristic has not been conveyed by the deed".

In the case which I posed, it could be argued, therefore, that since the purchaser does not intend to use the property as a corner store but as a residence, once the property is conveyed, its use by the purchaser of the property as a residence would change its characteristics so that the property would no longer be considered "commercial property" for the purposes of deed transfer tax.

However, a counter-argument would be that the case which I pose is distinguishable from the situation under consideration in *Director of Assessment (N.S.)* v. *Keddy, supra*, because the property, in the hands of the purchaser is still capable of being used as commercial property if the purchaser so wishes, thus it has not lost the characteristic of being a commercial property.

Again, I make no comment, since there is no case directly on point, for the time being, at least.

I should point out, however, that the officials at the Department of Municipal Affairs who administer Part II of the *Deed Transfer Tax Act* advise me that in such a case, tax would be payable because, at the time of, and immediately after the transfer, the property would show on the assessment roll as "commercial".

*Foreclosure Sales*

Where a foreclosure sale is held in a foreclosure action commenced by a mortgagee, care should be taken by that mortgagee, to avoid, if he can, bidding the property in himself, in the absence of other bidders, for the maximum bid. If he does so, then he is liable to pay deed transfer tax for the full amount of his bid.

In *First City Developments* v. *Dartmouth* (1978), 29 N.S.R. (2d) 78 it was held that the Dartmouth deed transfer tax by-law applies to deeds given in foreclosure

proceedings. In *Burnac Realty Investors Ltd.* v. *City of Dartmouth* (1979), 5 R.P.R. 293 the mortgagee bid the property in for $5,900,000.00 (the total amount owing on the mortgage being $8,478,100.93) and Cowan, C.J.T.D. held that the Dartmouth deed transfer tax (1% of the sale price of $5,900,000.00 or $59,000.00) must be paid by the mortgagee. In reaching this conclusion, Cowan, C.J.T.D. observed, (at p. 299) that

> "The by-law, in defining "sale price" specifically provides that the gross sale price of the real property transferred is the sum of the actual cash paid, property exchanged, given or bartered, past obligations cancelled or satisfied, purchase money obligations given, if any, and the real amount of all liens, mortgages and other encumbrances under the subject to which the sale is made. In the present case, the past obligation of the mortgagor is cancelled or satisfied, to the extent of that portion of the amount bid by it to which it is entitled as money owing to it by the mortgagor on the mortgage. It is immaterial, in my view, whether that part of the amount bid is paid to the sheriff and then repaid to the mortgagee, or whether it is, as authorized by the terms of the order, merely deducted from the amount of the bid."

Accordingly, although it may be necessary for a mortgagee to bid up to the maximum amount, if there are competing bids, a mortgagee, when bidding, should minimize the amount of his bid as far as is possible. This can be done quite easily in the absence of any other bidders. If, at the time the *Burnac* case arose, Part II of the *Deed Transfer Tax Act* had been in force, due to the fact that the shopping centre in question was clearly "commercial property" within the meaning of the provincial deed transfer tax legislation, there would have been an additional $118,000.00 in transfer taxes or a total of $177,000.00 in deed transfer tax payable.

### *Inter-spousal Transfers and Gifts*

In *Haggart* v. *Halifax* (1981), 45 N.S.R. (2d) 54, title to a condominium was taken by a husband in his name alone, but as part of a matrimonial settlement, he conveyed the property to his wife and she paid him $4,000.00 cash in return and

assumed the mortgage then outstanding on the property. The question was whether deed transfer tax was payable on the cash payment or on the mortgage as well.

The Appeal Division referred to the definition of "sale price" in the Halifax ordinance and held that this was a true sale in view of the cash payment of $4,000.00 and that the amount of the mortgage had to be added to the purchase price because the definition of "sale price" in the ordinance included "the real amount of all liens, mortgages, and other encumbrances under and subject to which the sale is made".

In *Dartmouth* v. *Hoque* (1981), 46 N.S.R. (2d) 162, several apartment buildings were transferred, by way of gift, by a husband to his wife, subject to several large mortgages and the question was whether or not there was any deed transfer tax payable on the amount outstanding on the mortgages, the City of Dartmouth arguing that the definition of "sale price" included "all liens, mortgages and other encumbrances under and subject to which the sale is made".

The Appeal Division, however, held that although mortgages are definitely included within the definition of "sale price", the words "under and subject to which the sale is made" definitely indicate that before tax is payable on the mortgages assumed, there must first be a sale. In this case, the Appeal Division held that there was not a sale and therefore no deed transfer tax was payable.

In any event, the law respecting gifts and inter-spousal transfers was clarified by the Legislature when, in 1982, it enacted what is now Section 4 of the *Deed Transfer Tax Act*.

This Section reads as follows:

> 4 (1) Notwithstanding Section 3 or any enactment, this Section applies to every municipality that under the authority of this Part or any other Act levies a tax of the kind permitted by this Part.
>
> (2) Where a deed transfers property
>
> (a) between persons married to one another; or
>
> (b) by way of gift, notwithstanding that

(i) the deed transfers property subject to an encumbrance including a mortgage or a lien for rates and taxes and the grantee assumes the amount of the encumbrance, including interest and expenses thereon, or

(ii) there is a nominal consideration therefor,

it is exempt from deed transfer tax.

Subsection (1) clearly makes these exemptions uniform with respect to not only the *Deed Transfer Tax Act* but to all other enactments respecting deed transfer tax, whether or not they expressly provide for such an exemption.

Thus gifts and inter-spousal transfers are now clearly exempt from deed transfer tax.