

SB 132-FN-A-LOCAL – AS INTRODUCED

2011 SESSION

11-0779

09/10

SENATE BILL ***132-FN-A-LOCAL***

AN ACT establishing exemptions from the real estate transfer tax.

SPONSORS: Sen. Sanborn, Dist 7; Sen. Bragdon, Dist 11; Sen. Forsythe, Dist 4; Sen. White, Dist 9; Sen. Bradley, Dist 3; Sen. Rausch, Dist 19; Sen. Groen, Dist 6; Sen. De Blois, Dist 18; Sen. Forrester, Dist 2; Rep. Major, Rock 8; Rep. T. Keane, Merr 13; Rep. D. McGuire, Merr 8; Rep. Bettencourt, Rock 4; Rep. Jennifer Coffey, Merr 6

COMMITTEE: Ways and Means

ANALYSIS

This bill establishes exemptions from the real estate transfer tax for transfers of title between spouses, certain transfers to or from a revocable trust, and transactions resulting from restructuring of ownership.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT establishing exemptions from the real estate transfer tax.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Real Estate Transfer Tax; Exceptions; Transfers of Title Between Spouses. Amend RSA 78-
2 B:2, XIII to read as follows:

3 XIII. To ***any transfer of title between spouses, including*** a transfer of title between
4 spouses pursuant to final decree of divorce or nullity.

5 2 New Paragraphs; Real Estate Transfer Tax; Exemptions. Amend RSA 78-B:2 by inserting
6 after paragraph XIX the following new paragraphs:

7 XX. To transfers to or from a revocable trust if the beneficial interest in the trust remains in
8 the same individual or the spouse of the same individual and the purpose of the trust is for estate
9 planning purposes as a testamentary substitute.

10 XXI. To a transfer of title (i) to an entity that is wholly-owned by the transferor, (ii) to a
11 person or entity that wholly owns the transferor, or (iii) between 2 entities that are each wholly-
12 owned by the same person or entity. For purposes of this paragraph, the term “wholly-owned” means
13 ownership of 100 percent of the stock, shares, membership interests or other interests comprising the
14 outstanding equity ownership of the entity.

15 3 Applicability. Sections 1 and 2 of this act shall apply to all transfers of title occurring on or
16 after the effective date of this act and to any transfer of title occurring prior to the effective date of
17 this act that is subject to assessment of tax and is appealed pursuant to RSA 21-J:28-b.

18 4 Effective Date. This act shall take effect upon its passage.

LBAO
11-0779
Revised 02/16/11

SB 132 FISCAL NOTE

AN ACT establishing exemptions from the real estate transfer tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill will increase state general fund expenditures, and decrease state general fund revenue by an indeterminable amount in FY 2011 and each year thereafter. There would be no fiscal impact on county and local revenue or expenditures.

METHODOLOGY:

The Department of Revenue Administration states this bill establishes an exemption from the real estate transfer tax (RETT). The Department states there would be additional costs to administer this bill resulting from appeals, possibility of issuing refunds, and the loss of audit revenue. The law would take effect upon passage and apply to all transfer of title occurring on or after the effective date of this act and to any transfer of title occurring prior to the effective date of this act that is subject to assessment of tax and is appealed pursuant to RSA 21-J:28-b. The Department states this would appear to be a disparate treatment of taxpayers. An immediate impact may be felt due to the potential for refunds based upon taxpayer requests for refunds of taxes paid on transfers that were taxable prior to the establishment of this new exemption. The Department is unable to estimate the negative impact on state tax revenues due to the RETT exemptions going forward, or those allowed retroactively. However, the Department estimates this could potentially cost the state several million dollars. In November 2010, the New Hampshire Supreme Court issued a decision in First Berkshire Business Trust, et al v. Commissioner, New Hampshire Department of Revenue Administration. The Court's decision unanimously affirmed the Department's interpretation of RSA 78-B as it pertains to related-party real estate transactions. The Department states this bill would overturn the Court's decision. The Department assumes 17 RETT cases (totaling approximately \$3.6M) pending in the Department's Hearings Bureau would be immediately dismissed with the passage of this bill. In addition, the Department assumes there would be additional appeals filed with the Department's Hearings Bureau by those who were issued a tax assessment in order to have this new law be applicable. The exact fiscal impact cannot be determined at this time.