I. Real Estate Conveyance Tax (Conveyance Tax)

A. Most states impose a tax on the transfer of interests in real property for consideration, generally couched in terms of a transfer by deed or other writing. The tax is most commonly imposed on the grantor. Rates of tax range from 0.10% in Alabama, Georgia and Kentucky\(^1\) to 1.50% in Connecticut and Maryland,\(^2\) and even to 3% in certain counties of Delaware and New York.\(^3\)

B. Many states first adopted conveyance taxes in the 1970s when the federal Documentary Stamp Tax on deeds was repealed. That tax had existed since the Civil War. The regulations, withdrawn by T.D. 8314, 1990-2 C.B. 220, 55 Fed. Reg. 41519, 41522 (1990), are reproduced at Appendix A.

C. Interests in real property

1. Defined in the federal regulations as “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, such as an estate in fee simple, life estate, perpetual easement, etc.” Treas. Regs. § 47.4361-1(a)(4)(i)(a).

   a. Thus, leases are generally excluded.

   (i) However, the federal regulations included long-term leases as: “Those interests enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consist of a bundle of rights approximating those of the class of interests mentioned in subdivision (a) of this regulation.” Treas. Regs. § 47.4361-(a)(4)(i)(b).

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\(^2\) Conn. Gen. Stat. § 12-494 (1.25% or 1.5%, depending on municipal tax rate); Baltimore City Code §§17-2, 17-5 (in other Maryland localities, the combined state and local rates generally equal 1%).

(ii) State regulations are ordinarily more specific, including as taxable leases with terms as short as five years or more or as long as more than ninety-nine years.4

(iii) And regulations may specifically include transfer of the lessor’s reversionary interest. See, e.g., Conn. Agencies Regs. § 12-494-2(a)(4).

b. Also excluded as not being conveyances are contracts of sale, options that do not convey legal title, assignments of such contracts and options, and deeds deposited in escrow, see Treas. Reg. § 47.4361-2(b)(6), and Conn. Agencies. Regs. § 12-494-2(c)(1)-(4), but New York includes contracts of sale and options as conveyances subject to tax, N.Y. Tax Law § 1401(f), exempting such instruments where the consideration is less than $200,000 and the real property is the residence of the transferor. N.Y. Tax Law § 1405(b)(10).

c. Included may be other transactions, such as sales of mobile homes in situ. Conn. Agencies Regs. § 12-494-2(a)(5).

D. Transfer by deed or writing

1. The federal regulations defined deed to include any instrument whereby realty “is assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or at his direction, any other person.” Treas. Regs. § 47.4361-1(a)(4)(iii).

2. The statutes ordinarily provide for payment to a clerk at the time of filing. However, the tax is ordinarily imposed on the transfer, not the act of filing.

   a. A delayed filing may incur an interest charge.

E. Transfer for consideration

1. In most states consideration is both an element of the tax and its measure. In some, the tax is imposed without regard to consideration and is measured by the value of the property interest transferred. See, e.g., 72 Pa. Stat. § 1102-C.

2. Among the examples of taxable transfers for consideration listed in Treas. Regs. § 47.4361-2(a):

   a. An exchange of real property for other property, real or personal.

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4 Del. Realty Transfer Tax Regs. § 3; Conn. Agencies Regs. § 12-494-1(b)(2).
b. A transfer by a defaulting mortgagor in cancellation of the mortgage debt.
c. A deed of foreclosure.
d. A conveyance in condemnation or under threat of condemnation.
e. A conveyance to a corporation in exchange for shares of its stock.


f. A conveyance by a partner in contribution to partnership assets.


h. Separately addressed are partnership terminations. Treas. Reg. § 47.4383-1(b)

3. Among those listed as in Treas. Regs § 47.4361-2(b) excluded as either not being a transfer or not being for consideration:

a. A gift: “Conveyances of realty without consideration and otherwise than in connection with a sale . . .”
b. A deed to a trustee not pursuant to a sale.
c. A deed of realty held to secure a debt upon repayment of the debt.
d. A deed confirming title, such as one to correct a flaw in title.
e. A deed by an executor under a will (unless the heirs take shares different from those specified in the will).
f. A deed from agent to principal conveying property purchased with funds of the principal.
g. A deed of partition (unless the parties take shares different from their undivided interests).
h. A deed by a debtor to a trustee for benefit of creditors (but the trustee’s later deed to creditors is not excluded).
i. A conveyance to a receiver and reconveyance at termination of the receivership.
j. A transfer in a merger or consolidation from a constituent corporation to the continuing or new corporation.

k. Note that a conveyance in corporate liquidation, not subject to corporate debt, but solely for cancellation of stock, was said not to be subject to tax. Treas. Reg. § 47.4361-2(a)(8).

4. Measure of tax – amount of consideration

a. In the federal tax, consideration included a purchase money mortgage, but not a preexisting mortgage that was assumed. Treas. Regs. § 47.4361-1(b).

b. States may include or exclude an assumed mortgage and some states impose a separate tax on the recording of mortgages. Compare Conn. Agencies Regs. § 12-491(a)(1) and (2) and Kans. Stat. Ann. § 79-3102.

(i) A mortgage obligation of which the seller is relieved in the transaction would appear to be consideration.

(c) When the consideration is not money or denominated in money, as in the case of an exchange or of a contribution to capital, the tax is ordinarily measured by the fair market value of the property.

5. Exemptions

a. The federal tax exempted deeds given as security for debt. Treas. Reg. § 47.4362-1(a).

b. Also exempted were deeds to which the United States, a state or certain kinds of organizations were a party; and the Bankruptcy Act exempted deeds relating to certain reorganizations. See id. and § 47.4382-1.

c. Connecticut and New York exemptions include:

(i) Deeds given by the U.S., a state or a municipality of the state.

(ii) Deeds given by an exempt person, e.g., a charitable organization, to another exempt person.

(iii) Deeds given to secure a debt (Note that in a number of states mortgage deeds are taxable).

(iv) Deeds given in corporate mergers.

(1) Statutes may not have been updated to include mergers of noncorporate entities.6

5 See, e.g., N.Y. Tax Law § 1405, Conn. Gen Stat. § 12-498. Note that many of the listed exemptions are actually nontaxable transactions for no consideration.
(v) Deeds given in tax sales.
(vi) Deeds in bankruptcy (perhaps limited to deeds in federal bankruptcy proceedings).
(vii) Bona fide gifts.
(viii) Contracts of sale.
(ix) Deeds from agent to principal.
(x) Options that do not vest title,
(xi) Deeds of partition (at least to the extent each party takes an unchanged share).
(xii) Leases of a term of less than [x] years. 7
(xiii) Deeds given by a subsidiary to a parent solely in liquidation of its stock.

d. There may be an exemption for transfers between parties when there is merely a change in identity and no change in beneficial ownership, but this is not common and is likely a signal that a controlling interest transfer tax applies. 8

II. Controlling Interest Transfer Tax (CIT Tax)

A. A change in beneficial ownership of real property occurs whenever a corporation or other entity owning real property changes hands, but such a transaction is not subject to Conveyance Tax.

B. Connecticut, New York, Maine, Washington and to a limited extent, the District of Columbia and New Jersey have responded to perceived avoidance by enacting taxes imposed on the transfer of a controlling interest in an entity that owns an interest in real property located in the state. 9

C. There are two basic statutory models:

1. New York includes in the definition of a conveyance the transfer of a controlling interest in an entity holding New York real property. 10

2. Connecticut enacted a separate tax. 11

D. The taxable event is the transfer of a controlling interest in an entity owning an interest in real property located in the state.

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7 99 years in Connecticut, Conn. Agencies Regs. § 12-494-1(b)(2); 49 years in New York, N.Y. Code Rules & Regs. § 575.7(a).
10 N.Y. Tax Law § 1401(e). New York authorities relating to controlling interest transfer tax include those arising under the now repealed transfer gains tax.
1. An interest in real property is generally the same for both CIT Tax and Conveyance Tax
   a. However, to be effective, the tax looks through tiers of beneficial ownership to a lower level entity that owns such property.
      (i) For many years the Connecticut Tax Department did not take this approach, effectively permitting nontaxable transfer of property held by second-tier subsidiary entities.

2. Control may be defined either as “50% or more” or as “more than 50%”, but generally it means the requisite percentage of ownership of voting stock in a corporation, and, the capital or profits or beneficial interest in the entity in other entities.\(^{12}\)

3. Transfers are aggregated.
   (a) To determine whether a transfer of control has occurred, the tax ordinarily provides for the aggregation over time of multiple transfers.\(^{13}\)
   (b) Further, a control transfer is ordinarily measured among groups of transferors and/or transferees acting in concert, not simply between an individual transferor and or transferees.\(^{14}\)
      (i) Attribution rules provide some guidance, but do not cover all the possibilities.
      (ii) The Connecticut DRS has ruled that an IPO is not subject to the tax because the transferees are not acting in concert. Connecticut Ruling 90-40.

4. When considering mergers and consolidation within corporate groups, the Connecticut DRS has consistently looked to whether there has been a change in ultimate beneficial interest. See, e.g., Ruling 99-6 and other rulings cited therein.
   (a) Where the Conveyance Tax and CIT Tax are separate, mergers present the issue which tax they are subject to. The Connecticut DRS held they are not subject to the Conveyance Tax, from which deeds of merger are exempt,\(^{15}\) but to the CIT Tax, which has no such exemption.

\(^{12}\) Conn. Gen. Stat. § 12-638a
\(^{13}\) See, e.g., D.C. Code Ann. § 42-1102-02(a); Me. Rev. Stat. Ann. § 4641 (1-A); Wash. Rev. Code § 82.45.010; N.Y.C.R.R. §575.6; Conn. LSN 89.
\(^{14}\) Id.
\(^{15}\) Query: Why an exemption if the transaction is not subject to tax?
E. The tax is ordinarily measured by the full fair market value of the property, but it may be the FMV times the percentage of the entity transferred.

F. The rate of tax is ordinarily the same as the conveyance tax rate, but it may differ.16

G. Exemptions may or may not track the exemptions for Conveyance Tax.
   1. In New York, where the CIT Tax is part of the conveyance tax, the exemptions are identical.
   2. In Connecticut, where the two taxes are separate, there are no CIT Tax exemptions at all, simply exceptions for property located in an “enterprise zone” and for transfers that effect a mere change of identity or form of ownership where there is no change in beneficial ownership.17

H. Returns are required of the transferors who are liable for the tax, but information returns from the entity may also be required.

III. Sales and Use Taxes

A. Sales taxes are generally imposed on transfers for consideration of tangible personal property.
   1. As is the case with conveyance tax, contributions to capital, mergers and other forms of reorganization are facially taxable because they are transfers for consideration.

B. However, the sales tax is ordinarily a privilege tax or a gross receipts tax imposed only on those engaged in retailing and the use tax a complementary tax imposed only on purchases from a retailer.
   1. The definition of “retailer” may explicitly state a threshold level of activity required to qualify as a retailer or it may be implied.18

C. A sale by a person who is not a retailer, or a sale by a person who is a retailer but is not a retailer of the kind of goods sold may qualify as an exception to the sales and use taxes referred to variously as a “casual”, “isolated” or “occasional” sale.
   1. Most states recognize some form of casual sale exception when an entity disposes of all or substantially all of its assets.
      a. “[A] sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a

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16 In CT, the rate of tax on conveyances is 1.25% or 1.5%, depending on the location of the property, but the CIT Tax rate is 1.11%.
18 See, Cal. Rev. & Tax Code § 6019 (Three sales in twelve months).
certificate of registration, including a sale or exchange of all or substantially all the assets of any business.” Va. Code § 58.1-609.

(i) “All or substantially all” may present an issue where there are significant unwanted assets.

(ii) Additionally, does the “all or substantially all” requirement apply to the seller’s worldwide assets or just to those located in the taxing state.

b. Inventory held for sale cannot be part of a casual sale.

(i) It may be sold in a nontaxable sale for resale if the purchaser will carry on the seller’s retailing line of business.

(ii) If that is the case, the buyer should give the seller a resale certificate.

c. In most states, motor vehicles, boats and aircraft fall within an exception to the casual sale rule so that transfers of these items are always taxable. N.Y. Tax Law § 1115(a)(18); N.Y.C.R.R. 20 § 528.19;

(i) This is one reason for holding such property of high value in a stand-alone entity.

D. However, a particular sale may not qualify, and some states, such as California, Maryland and New York, do not recognize the casual sale exception, at least not in a form applicable to sales of property of substantial value.19

1. If no exemption applies, consideration may be given to conducting the transaction in a jurisdiction where the casual sale rule would apply.

2. Regulations may provide that, under certain circumstances, a contribution of assets to a newly formed corporation or other entity is not taxable, apparently on the theory that such a transaction is not for consideration.

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19 N.Y. Tax Law § 1115(a)(18); N.Y.C.R.R. 20 § 528.19 (sales at private residence only); Md. Code Ann. Tax-Gen. § 11-209(a); Md. Regs. Code § 03.06.01.12 (sales of $1,000 or less); Cal. Rev. & Tax Code. § 6006.5; Cal. Rev. & Tax Code § 6006.5(a); Cal. Code Regs. 18 § 1595(a) (exclusion for any sales by a retailer).
a. For example, exempt from tax in New York is “the transfer of property to a corporation upon its organization in consideration for the issuance of its stock” and “the contribution of property to a partnership in consideration for a partnership interest therein.” N.Y. Code, Rules & Regs. § 526, 6(d)(I)(iv) and (v).

(i) Strict adherence to the regulatory provision is essential. For example, the transfer must be made upon the organization of the corporation. Id. at (d)(5). Where the corporation issues securities other than stock or assumes liabilities, the transaction will be taxable to the extent of the consideration. Id. at (d)(5)(iv).

(ii) This suggests that a carefully executed “drop kick”, i.e., a contribution to capital followed by a sale of stock, will effectively transfer assets free of tax.

IV. Franchise Taxes

A. Tax considerations in choice of entity include the state income tax treatment of the entity in each jurisdiction where it will operate.

1. Generally, any entity will be taxable where it has physical presence and substantial nexus.21

   a. Physical presence includes having property (leased or owned), employees or agents inside the state.22

   b. Exceptions include a federal prohibition on state taxation of the net income of sellers of tangible personal property who limit their activity in a state to solicitation of orders which are sent outside the state for approval and acceptance and which are filled by delivery from outside the state. Public Law 86-272.23

   c. H.R. 1956, if enacted, would expand P.L. 86-272 to include capital-based taxes and those measured by gross receipts and to bring service providers within its protection, but a number of states oppose this enactment and the Multistate Tax Commission has proposed a nexus standard that lacks a physical-presence component.

B. In general, corporate net income is taxed at a rate higher than that imposed on the net income of individuals and is taxed again when distributed.

20 Similar rules apply in California and Maryland. See, Cal Code Regs. 18 § 1595(b)(4); Code of Md. Regs. § 03.06.01.13B(2).
1. In addition, corporations are in many states subjected to an additional or alternative tax on capital, usually measured by net worth.

2. Corporations are also generally subject to minimum taxes, which in some cases may be substantial.

C. In some states, entities that are pass-through entities for purposes of federal taxation may be subject to corporate income and capital-based taxes and/or to the corporate minimum-tax regime.

1. S corporations are vulnerable to treatment as a corporation, either because the state does not recognize S elections or because the entity fails to make a separate state S election.

   a. Even when the election is recognized, the state may impose franchise or corporate minimum taxes on the S corporation.

2. LLCs taxable as partnerships for federal tax purposes and other pass-through entities may also incur tax burdens because they are classified as corporations for a particular state’s tax purposes or because they are subjected to a minimum or other tax.

   a. For example, Kentucky and Texas treat LLCs and LLPs as corporations, and Kansas, Louisiana, Pennsylvania, Tennessee, West Virginia and Wyoming subject LLCs to franchise tax.


   c. New Hampshire’s Business Profits Tax applies to all business entities.

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Appendix A

Federal Stamp Tax

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Subpart C—Tax on Issuance of Certificates of Indebtedness

47.4311-1 Imposition of tax on issuance of certificates of indebtedness.
47.4311-2 Illustrations.
47.4312-1 Tax on renewal of certificates of indebtedness.
47.4313-1 Bond as security for debt.
47.4315-1 Cross references.

Subpart D—Tax on Sales or Transfers of Capital Stock and Similar Interests

47.4321-1 Imposition of tax.
47.4321-2 Illustrations.
47.4321-3 Anon warrants.
47.4321-4 Cross references.
47.4322-1 Exemptions.
47.4322-1 Affixing of stamps.
47.4324-1 Cross references.

Subpart E—Tax on Sales or Transfers of Certificates of Indebtedness

47.4331-1 Imposition of tax.
47.4331-2 Illustrations.
47.4331-3 Tax on warrants.
47.4331-4 Records of sales and transfers of certificates of indebtedness.
47.4331-5 Registration of nominees.
47.4331-6 Rules applicable to securities exchanges and clearinghouses.
47.4332-1 Exemptions.
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Subpart F—Provisions Common to Sales or Transfers of Capital Stock and Certificates of Indebtedness

Exemptions
47.4341-1 Transfers as security.
47.4342-1 Transfers to or by fiduciaries or custodians.
47.4343-1 Transfers by operation of law.
47.4344-1 Certain other transfers.
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Miscellaneous Provisions
47.4351-1 Definitions.
47.4352-1 Affixing of stamps.
47.4352-2 Affixing of stamps by certain clearinghouses.
47.4353-1 Payment of tax through national securities exchanges or their clearinghouses.
47.4354-1 Cross references.

Subpart G—Tax on Conveyances

47.4361-1 Imposition of tax.
47.4361-2 Illustrations.
47.4361-3 Affixing of stamps.
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Subpart H—Tax on Policies Issued by Foreign Insurers

47.4371-0 Applicability of subpart.
47.4371-1 Imposition of tax on policies issued by foreign insurers; scope of tax.
47.4371-2 Rate and computation of tax.
47.4374-1 Affixing of stamps.
47.4375-1 Cross references.

Subpart I—Miscellaneous Provisions Applicable to Documentary Stamp Taxes

47.4381-1 Definitions.
47.4382-1 Exemptions.
47.4383-1 Certain changes in partnership.
47.4384-1 Liability for tax.

Subpart J—Administrative Provisions

Applicable to Documentary Stamp Taxes

47.6001-1 Records of sales and transfers of stock.
47.6001-2 Records with respect to foreign insurance policies.
47.6801-1 Establishment of meter machines and stamps.
47.6802-1 Where stamps may be purchased and when unused documentary stamps may be purchased or resold.
47.6804-1 Stamps to be used and denominations thereof.
47.6804-2 Cancellation of stamps.
47.6805-1 Redemption of stamps.
47.7209-1 Use or resale of unused stamps.
47.7211-1 Cross references.
47.7805-1 Promulgation of regulations.


Source: T. D. 6589, 27 FR 1088, Feb. 7, 1962, unless otherwise noted.

Subpart A—Introductory Provisions

§ 47.0-1 Introduction.

(a) In general. The regulations in this part (Part 47, Subchapter D, Chapter I, Title 26 (1954) Code of Federal Regulations) are designated "Documentary Stamp Tax Regulations." The regulations relate to the taxes imposed by Chapter 34 of the Internal Revenue Code of 1954, as amended, to certain related administrative provisions of Subtitle F of such Code. Chapter 34 of the Code imposes a tax on the issuance and on the sale or transfer of shares or certificates of stock or certificates of indebtedness, on conveyances of realty, and on policies issued by foreign insurers. References in these regulations to the "In-
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Subpart G—Tax on Conveyances

§ 47.4361-1 Imposition of tax.

(a) Scope of tax. (1) Section 4361 imposes a tax upon deeds, instruments, or other writings, whereby realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or, at his direction, any other person, when the consideration for, or value of, the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100.

(2) The tax is limited to conveyances of realty sold and does not apply to other conveyances (see paragraph (b) of § 47.4361-2). The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. Deeds deposited in escrow become subject to the tax upon delivery to the grantee. A conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires.

(3) For purposes of the tax imposed by section 4361, the determination of what constitutes "realty" is not controlled by the definition or scope of that term under State law. State law determines the character of the rights conveyed by an instrument, but whether such conveyance constitutes a conveyance of "realty" is to be determined under Federal law.

(4) For purposes of the regulations in this part:

(i) The term "realty" includes:

(a) 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, such as an estate in fee simple, life estate, perpetual easement, etc., and

(b) Those interests enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consist of a bundle of rights approximating those of the class of interests mentioned in (a) of this subdivision.

(ii) The term "sold" imports a transfer of an interest for a valuable consideration, which may involve money or anything of value.

(iii) The term "deed" includes any instrument or writing whereby realty is assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or at his direction, any other person.

(b) Rate and computation of tax. The rate of tax is 55 cents on each $500 or fractional part thereof of the net consideration paid for, or the net value of, the realty conveyed, that is, the gross consideration or gross value less, in either case, the amount of all liens or encumbrances on the realty existing before the sale and not removed thereby. The tax is based upon the net consideration where it is definite in amount, or may be definitely determined. The tax is based upon net value where the amount of the consideration is indefinite, or is left open to be fixed by future contingencies. In determining the amount of the net consideration for, or net value of, the realty conveyed, only the amount of the liens and encumbrances on the property existing before the sale and

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Subpart G—Tax on Conveyances

§ 47.4361-1 Imposition of tax.

(a) Scope of tax. (1) Section 4361 imposes a tax upon deeds, instruments, or other writings, whereby realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or, at his direction, any other person, when the consideration for, or value of, the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100.

(2) The tax is limited to conveyances of realty sold and does not apply to other conveyances (see paragraph (b) of § 47.4361-2). The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. Deeds deposited in escrow become subject to the tax upon delivery to the grantee. A conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires.

(3) For purposes of the tax imposed by section 4361, the determination of what constitutes "realty" is not controlled by the definition or scope of that term under State law. State law determines the character of the rights conveyed by an instrument, but whether such conveyance constitutes a conveyance of "realty" is to be determined under Federal law.

(4) For purposes of the regulations in this part:

(i) The term "realty" includes:

(a) 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, such as an estate in fee simple, life estate, perpetual easement, etc., and

(b) Those interests enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consist of a bundle of rights approximating those of the class of interests mentioned in (a) of this subdivision.

(ii) The term "sold" imports a transfer of an interest for a valuable consideration, which may involve money or anything of value.

(iii) The term "deed" includes any instrument or writing whereby realty is assigned, transferred, or otherwise conveyed to, or vested in, the purchaser, or at his direction, any other person.

(b) Rate and computation of tax. The rate of tax is 55 cents on each $500 or fractional part thereof of the net consideration paid for, or the net value of, the realty conveyed, that is, the gross consideration or gross value less, in either case, the amount of all liens or encumbrances on the realty existing before the sale and not removed thereby. The tax is based upon the net consideration where it is definite in amount, or may be definitely determined. The tax is based upon net value where the amount of the consideration is indefinite, or is left open to be fixed by future contingencies. In determining the amount of the net consideration for, or net value of, the realty conveyed, only the amount of the liens and encumbrances on the property existing before the sale and

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not removed thereby may be deducted. Thus, for example, taxes or assessments which are liens on the property before the sale and are not paid at the time of sale are deductible. No deduction shall be made on account of any lien or encumbrance placed upon the property in connection with the sale, or by reason of deferred payments of the purchase price whether represented by notes or otherwise.

§ 47.4361-2 Illustrations.

(a) Conveyances subject to tax. The following are examples of conveyances subject to the tax:

(1) A conveyance of realty in exchange for other property; also the conveyance of the other property, if it is realty.

(2) A conveyance of realty in consideration of life maintenance. The tax is computed on the net value of the realty conveyed.

(3) A conveyance by a defaulting mortgagor to the mortgagee in consideration of the cancellation of the mortgage debt. The tax is computed on the amount of the unpaid mortgage debt plus unpaid accrued interest.

(4) Deeds, given by masters in chancery, sheriffs, clerks of court, etc., for realty sold under foreclosure or execution. The tax is computed on the amount paid for the property plus the costs if paid by the purchaser, whether the purchaser is the mortgagee, judgment creditor, or any other person.

(5) A conveyance of realty by a judgment or decree in a condemnation proceeding under the power of eminent domain, or a conveyance of such property under threat of imminence of such proceeding.

(6) Conveyances to or by building and loan associations. However, the tax does not apply to a conveyance of realty to a building and loan association for the purpose of securing a loan thereon, nor to the reconveyance of the realty to its owner as part of the loan transaction.

(7) A conveyance of realty to a corporation in exchange for shares of its capital stock.

(8) A conveyance of realty by a corporation in liquidation or in dissolution to its shareholders subject to the debts of the corporation; however, if there are no corporate debts and the conveyance is made solely for the cancellation and retirement of the capital stock, the tax does not apply.

(9) Deeds to standing timber and to mines. (For definition of the term "deed", see paragraph (a)(4)(iii) of § 47.4361-1.)

(10) In jurisdictions where common-law dower still exists, an instrument conveying the estate acquired by a widow upon assignment of dower. However, an instrument purporting to convey the inchoate right of dower of a wife, or the consummate right of dower of a widow prior to assignment of dower, is not subject to the tax. Where by statute dower has been abolished and in lieu thereof a different interest in the husband's real property conferred upon the wife, the taxability of an instrument purporting to convey such interest prior to its assignment must be determined by the nature of the wife's interest as fixed by the statutes and decisions of the jurisdiction in which the real estate is located.

(11) A conveyance of real estate sold to or by the United States (see, however, paragraph (a) of § 47.4364-1).

(12) A conveyance of realty by a partner to the partnership as a contribution of partnership assets. See section 4363 and § 47.4363-1 for application of tax in case of a termination of a partnership owning realty.

(b) Conveyances not subject to tax. In addition to the various exemptions prescribed in sections 4362 and 4382 and in the Bankruptcy Act as amended, the following are examples of conveyances not subject to tax:

(1) The reconveyance of realty conveyed to secure a debt, upon payment of such debt.

(2) Conveyances of realty without consideration and otherwise than in connection with a sale, including a deed conveying realty as a bona fide gift, although the deed may recite a consideration for the transfer, such as "natural love and affection and $1", "desire to promote public welfare and $1", or "$1 and other valuable consideration"; a gift of realty by a husband to his wife accomplished through the conveyance of the property for an ostensible consideration to a "straw
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(1) A deed to confirm title already vested in the grantee, such as a quit claim deed to correct a flaw in title.

(2) A deed conveying real estate for a definite term of years, such as a lease, or a contract for the sale of real property, if the contract does not vest legal title.

(3) A deed executed by a debtor conveying property to a trustee for the benefit of his creditors; however, when the trustee converts such property to a creditor or sells it to any other person, the deed executed by him is taxable.

(4) A conveyance to a receiver of realty included in the receivership assets, and reconveyance of such realty upon termination of the receivership.

(5) A deed conveying real estate situated in a foreign country.

(6) Transfer of real estate in a statutory merger or consolidation from a continuing or new corporation.

§ 47.4361-3 Affixing of stamps.

(a) Only documentary stamps shall be used in payment of the tax imposed by section 4361. The requisite stamps shall be affixed to the deed, instrument, or other writing by which the realty is conveyed. See §§ 47.6804-1 and 47.6804-2 for the appropriate use, denominations, and cancellation of such stamps.

(b) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802-1. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801, 6802, and 6805, and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration) and § 47.6801-1.

§ 47.4362-1 Exemptions.

(a) Security for debt. Section 4362 expressly exempts from the tax imposed by section 4361 any instrument or writing, such as a mortgage or a deed of trust, given to secure a debt.

(b) Conveyance to which State is party. No State or Territory, or political subdivision thereof, or the District of Columbia shall be liable for the tax imposed by section 4361 in respect of a conveyance to which it is a party regardless of the capacity in which it acts. However, the conveyance is not exempt from tax, and the nonexempt party to the conveyance shall be liable for the tax. The affixing of stamps to the deed or other instrument of conveyance by the exempt governmental body does not constitute payment of the tax, and the nonexempt party remains liable for the tax in such case.

(c) Other exemptions. For other exemptions, see section 4332 and § 47.4382-1.

§ 47.4363-1 Cross references.

(a) For definitions, see section 4381, § 47.4381-1, and section 7701.

(b) For penalties, see sections 7271 and § 47.7271-1.

(c) For other general and administrative provisions, see section 4384, § 47.4384-1, Subpart J, and the applicable sections of Subtitle F and the regulations in Part 301 of this chapter.
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(Regulations on Procedure and Administration).

Subpart H—Tax on Policies Issued by Foreign Insurers

§ 47.4371-0 Applicability of subpart.

The provisions of this subpart apply only to premiums charged or paid before January 1, 1966. See Subpart A1, Part 46 of this chapter for provisions relating to premiums paid on or after January 1, 1966.

(Sec. 4374, 68A Stat. 522; 26 U.S.C. 4374)
(T.D. 7023, 35 FR 1013, Jan. 24, 1970)

§ 47.4371-1 Imposition of tax on policies issued by foreign insurers; scope of tax.

(a) Certain insurance policies, and indemnity, fidelity, or surety bonds. Section 4371(1) imposes a tax upon each policy of insurance (other than those referred to in paragraph (b) of this section), upon each indemnity, fidelity, or surety bond, or upon each certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of insurance of the character involved or an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed, if issued:

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as insurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia in which such insurer is authorized to do business, or if not so signed or countersigned, the insurer is not subject to tax under section 819; and

(2) To any person with respect to the life or hazards to the person of a citizen or resident of the United States.

(c) Reinsurance. Section 4371(3) imposes a tax upon each policy of reinsurance, certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of reinsurance is made, continued, or renewed, if issued:

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as reinsurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the reinsurer in a State, Territory, or the District of Columbia in which such reinsurer is authorized to do business; and

(2) To any person against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts described in section 4371(1) or (2).

(d) Exempt indemnity bonds. The tax imposed by section 4371 does not apply to any indemnity bond described in section 4373(2).

§ 47.4371-2 Rate and computation of tax.

(a) Rate of tax. (1) The tax under section 4371(1) is imposed at the rate
of 4 cents on each dollar, or fractional part thereof, of the premium charged.

(2) The tax under section 4371 (2) and (3) is imposed at the rate of 1 cent on each dollar, or fractional part thereof, of the premium charged.

(b) Computation of tax. The tax is measured strictly by the amount of the premium charged. The time and method of payment of the premium are immaterial; the tax liability attaches if the insurance becomes effective, even though the premium is never paid. The full rate of tax applies to each fractional part of a dollar of the premium charged. For example, upon a premium charge of $10.10, the tax at the rate of 4 cents amounts to 44 cents, and at the rate of 1 cent amounts to 11 cents.

(c) Meaning of premium. For purposes of the regulations in this part, the term "premium" means the agreed price or consideration for assuming and carrying the risk, or obligation, and includes any additional assessment or charge which may be assessed or charged under the contract, whether payable in one sum or installments.

§ 47.4371-1 Affixing of stamps.

(a) General. (1) Documentary stamps shall be used in payment of the tax. Requisite stamps must be affixed to the first instrument whereby the taxable contractual relationship is created, continued, or renewed, whether it be a letter of acceptance, a cablegram, or other instrument by whatever name called. Where the instrument which creates or evidences the contractual relationship is confirmed by a subsequent instrument, the latter shall bear a notation designating such prior instrument (referred to in this section as the original instrument) and showing that the requisite stamps have been affixed thereto and canceled.

(2) In any case where the amount of the premium is not definitely determined at the time of entering into the taxable contractual relationship, the stamps may be affixed to the receipts for monthly or other payments if proper notation be made upon such receipts identifying the original instruments to which they apply.

(3) The stamps shall be affixed by any person who is a party to the taxable contractual relationship, including any solicitor or broker acting for or on behalf of such person.

(b) Subsequent instruments. In case a subsequent instrument provides for the payment of a premium greater than that provided for in the original instrument, the subsequent instrument must have affixed thereto stamps equal to the tax imposed upon the additional premium charged and must bear a notation of the stamps affixed to the original instrument.

(c) Affixing of stamps. (1) Only documentary stamps shall be used in payment of the tax imposed by section 4371. See also §§ 47.6804-1 and 47.6804-2 for the appropriate use, denominations, and cancellation of such stamps.

(2) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802-1. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801, 6802, 6805, and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration), and § 47.6801-1.

(d) Instruments without stamps or notation of stamping. For provisions relating to the penalty for failure to comply with the requirements of section 4374, see section 7270.

(e) Record requirements. For provisions relating to the requirements concerning records and the retention of policies for a period of 3 years, see § 47.6001-2.

§ 47.4375-1 Cross references.

(a) For definitions, see section 4381, § 47.4381-1, and section 7701.

(b) For penalties, see section 7271 and § 47.7271-1.

(c) For other general and administrative provisions, see section 4384, § 47.4384-1, Subpart J, and the applicable sections of Subtitle P and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).
§ 47.4381-1

Subpart 1—Miscellaneous Provisions Applicable to Documentary Stamp Taxes

§ 47.4381-1 Definitions.

(a) Certificate of indebtedness. The term "certificate of indebtedness" includes bonds, debentures, and certificates of indebtedness. Such term also includes all instruments, however termed, issued by a corporation with interest coupons or in registered form and known generally as corporate securities. The essence of a corporate security is marketability. An instrument is ordinarily considered to be marketable if it is issued in series, under a trust indenter, and in registered form or with interest coupons attached. For example, an instrument containing the essential features of a promissory note is included within the meaning of the term "certificate of indebtedness" if it has, in addition, the general characteristics of a corporate security. Whether or not an instrument is a certificate of indebtedness within the meaning of section 4381(a) is not determined by its name alone, but depends upon all the facts which can be derived from the face of the instrument, such as the form and terms of the instrument. The nature of the transaction or any act appearing outside of the instrument itself is immaterial for purposes of making such determination.

(b) Corporation. For purposes of the taxes imposed by sections 4301, 4311, 4321, 4331, 4361, and 4371, the term "corporation" includes associations, joint-stock companies, and insurance companies (see section 7701), as well as any investment trust or similar organization (or any person acting in behalf of such investment trust or similar organization) issuing, holding or dealing in shares or certificates of stock, or in certificates of indebtedness. In addition, for purposes of the tax imposed by section 4311, the term "corporation" also includes any receiver, trustee in bankruptcy, assignee, or other person having custody of property, or charge of the affairs, of the corporation.

(c) Shares or certificates of stock. For purposes of the regulations in this part, the term "stock" includes shares or certificates of stock. The term "stock" also includes shares in an association, joint-stock company, or insurance company (see section 7701). For purposes of the tax imposed by section 4321, the term "stock" also includes rights to subscribe for or to receive shares or certificates of stock (see paragraph (a) of § 47.4321-1). For purposes of the taxes imposed by sections 4301 and 4321, the term "shares or certificates of stock" includes shares or certificates of profits or of interest in property or accumulations.

(d) Cross references. For other definitions of general application, see § 47.0-2 and section 7701.

§ 47.4382-1 Exemptions.

(a) Government and State obligations. Section 4382(a)(1) exempts from the tax imposed by section 4311 or 4331 any certificate of indebtedness issued by the United States, or by any foreign government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power.

(b) Stocks and certificates of indebtedness of domestic building and loan associations, etc. (1) The tax imposed by section 4301, 4311, 4321, or 4331 does not apply to the issuance, sale, or transfer before January 1, 1963, of any share or certificate of stock or certificate of indebtedness issued by a domestic building and loan association, savings and loan association, cooperative bank, or homestead association substantially all the business of which is confined to making loans to members. The issuance, sale, or transfer after December 31, 1962, of a certificate of indebtedness issued by a domestic building and loan association or cooperative bank is not exempt from the tax imposed by section 4311 or 4331. The issuance, sale, or transfer after December 31, 1962, of a share or certificate of stock issued by a domestic building and loan association or cooperative bank is exempt from the tax imposed by section 4301 or 4321 only to the extent such share or certificate represents a deposit or withdrawable account. For definition of the terms "domestic building and loan associa-
tion" and "cooperative bank", see § 47.7701(a) (19) and (32).

(2) The tax imposed by section 4301, 4311, 4321, or 4331 does not apply to the issuance, sale, or transfer of any share or certificate of stock or certificate of indebtedness issued by a mutual ditch or irrigation company.

(c) Stocks and certificates of indebtedness of farmers', fruit growers', or cooperative associations. Section 4332(a)(3) exempts from the tax imposed by section 4301, 4311, 4321, or 4331 any stock or certificate of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in section 521. For regulations under section 521, see Part 1 of this chapter (Income Tax Regulations).

(d) Corporate and railroad reorganizations. (1) Section 4332(b)(1) exempts from the taxes imposed by sections 4301, 4311, 4321, and 4331 the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, to make effective any plan of reorganization or adjustment—

    (i) Confirmed under the Bankruptcy Act, as amended (11 U.S.C.);

    (ii) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77(m) of the Bankruptcy Act, as amended (11 U.S.C. 205(m));

    (iii) Approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106(3) of the Bankruptcy Act, as amended (11 U.S.C. 506); or

    (iv) Whereby a mere change in identity, form, or place of organization is effected.

The issuance, transfer, or exchange of securities, or the making, delivery, or filing of instruments of transfer or conveyance, occurs within 5 years from the date of such confirmation, approval, or change.

(2) Section 267 of the Bankruptcy Act (11 U.S.C. 667) also exempts from stamp tax the issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer under any plan of reorganization confirmed under Chapter X of the Bankruptcy Act, as amended. However, by reason of the provisions of section 4332(b)(1) the exemption conferred by section 267 has no application to the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, which occurs after 5 years from the date of confirmation or approval of the plan of reorganization.

(e) Orders of the Securities and Exchange Commission. Section 4332(b)(2) exempts from the taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 the issuance, transfer, or exchange of securities, or the making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 1083(a), if (1) the order of the Securities and Exchange Commission in obedience to which such issuance, transfer, or exchange of securities or conveyance is made recites that such issuance, transfer, or exchange of securities or conveyance is necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79(b)); (2) such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed; and (3) such issuance, transfer, exchange, or conveyance is made in obedience to such order.

(f) Alteration and modification of securities under the Interstate Commerce Act. Section 206 of the Interstate Commerce Act (49 U.S.C. 206) provides for alteration or modification of securities of a carrier as defined in section 20a(1). Paragraph (12) of such section 206 (by application of section 20b) makes sections 4301, 4311, 4321, 4331, and 4361, and any amendments thereto, unless specifically provided to the contrary, inapplicable to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effectuated pursuant to section 20b.

§ 47.4383-1 Certain changes in partnerships.

(a) Continuing partnerships. No tax shall be imposed under section 4321, 4331, or 4361 by reason of any transfer of an interest in a partnership holding shares, certificates, rights, or realty if such partnership (or another partnership) is considered to be a continuing partnership within the meaning of section 708 and if such shares, certificates, rights, or realty continue to be held, regardless of the name in which held, by the continuing partnership (or the continuing partnerships if more than one). For rules relating to continuations of partnerships, see section 708 and the regulations thereunder in Part I of this chapter (Income Tax Regulations). To the extent that the shares, certificates, rights, or realty do not continue to be so held, the taxes imposed by sections 4321, 4331, and 4361 will apply. For example, if a partner withdraws from a partnership under such circumstances that the withdrawal does not constitute a termination of the partnership under the provisions of section 708 and the regulations thereunder, and if the partnership transfers to him, in consideration for his withdrawal, stock owned by the partnership, the stock so transferred will be subject to tax. However, if the partner receives cash in consideration for his withdrawals, and the partnership retains the stock, no tax is imposed since the stock is held by a continuing partnership.

(b) Termination of partnerships. If there is a termination, within the meaning of section 708, of a partnership holding shares, certificates, rights, or realty, the partnership is considered, for purposes of the taxes imposed by sections 4321, 4331, and 4361, as having transferred at the time of such termination all of such shares, certificates, and rights, and as having executed at the time of such termination an instrument conveying, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all of such realty. However, not more than one tax shall be imposed under each section with respect to such shares, certificates, rights, or realty by reason of a termination and any transfer pursuant thereto. Tax should be computed with respect to the transfer or conveyance deemed to occur under this paragraph. Any other deemed or actual transfer or conveyance which occurs by reason of the transaction resulting in the termination is not subject to tax. The operation of this paragraph may be illustrated by the following examples:

Example (1). Partnership AB owns 150 shares of X Corporation stock having a total actual value of $13,000 and real estate having a fair market value (exclusive of the value of any lien or encumbrance thereon) of $10,000. Partner B retires and receives 100 shares of X Corporation stock in liquidation of his entire partnership interest. Partner A receives the remainder of the partnership properties in liquidation of his entire partnership interest, and he continues to run the business as a sole proprietor. Partnership AB is terminated within the meaning of section 708 since the partnership business is no longer carried on by a partnership. Partnership AB is, therefore, considered to have executed an instrument conveying the real estate for $10,000 and to have transferred the X Corporation stock having a total actual value of $13,000. The transaction is subject to the taxes imposed by sections 4321 and 4361. No tax is imposed on the actual transfer of 100 shares of X Corporation stock to partner B or on the actual transfer and conveyance of the remaining stock and realty to partner A since such conveyance and transfers are made by reason of the transaction resulting in the termination.

Example (2). Partnership ABCD owns 1,000 shares of Y Corporation stock having a total actual value of $60,000. Partner A owns a 40 percent interest in the capital and profits of the partnership and partners B, C, and D each have a 20 percent interest. In January, 1960, partner A sells his partnership interest to E, and in September, 1960, partner B sells his partnership interest to F thereby causing a termination of the partnership within the meaning of section 708. The partnership is, therefore, considered to have transferred in September, 1960, the 1,000 shares of Y Corporation stock, and there is a tax under section 4321 with respect to such shares. No further tax is imposed with respect to the transaction. Inasmuch as A is not a partner in the partnership at the time of its termination, he incurs no liability for the tax imposed with respect to the 1,000 shares of stock.

Example (3). Partnership ABCDE terminates within the meaning of section 708 by reason of the sale by B of his partnership interest to F. Pursuant to the termination transaction, partners A and B withdraw.
from the partnership, receiving stock owned by the partnership in consideration for their withdrawal, under such circumstances that the withdrawal constitutes a liquidation under section 708 and the regulations thereunder. All of the stock owned by the partnership is considered to be transferred on termination and tax is imposed with respect to such stock, but no additional tax is imposed with respect to the stock actually distributed to partners A and B in liquidation of their partnership interest. Furthermore, no tax will be imposed on the transfer by partners A and B of the stock distributed to them to a new partnership AB if such transfer is made pursuant to an agreement entered into concurrently with and as a result of the transaction in which partnership ABCDE is terminated.

(c) Application of section. Only those partnership changes occurring on or after January 1, 1959, shall be considered in determining whether a partnership is a continuing or terminated partnership under section 708.

§ 47.4384-1 Liability for tax.

(a) In general. Except as otherwise provided in paragraphs (c) and (d) of this section, the tax is payable by any of the parties, to a taxable transaction. For example, in the case of the transfer of stock, the liability therefor is imposed upon the transferor, the transferee, and the corporation whose stock is transferred (if there is a transfer of record). The parties to the transaction may agree among themselves as to which shall pay the tax, but such agreement does not relieve the others from their liability in the event it is not carried out. No provisions, by-laws, or rules, of any exchange, and no custom, shall exempt any person from payment of the tax imposed.

(b) Liability of subscriber for tax on issuance of stock. The liability of a subscriber for the tax imposed by section 4301 on an issuance of stock to him by a corporation extends only to that portion of the total tax on all issuances of stock by such corporation for the day that the total actual value of the shares or certificates of stock issued to him in that day bears to the total actual value of all shares or certificates issued by the corporation in such day. For example, if a total of 100 shares of stock having a total actual value of $1,800 are issued in one day by a corporation, the tax would be $1.80. If A were issued in that day 10 shares of such stock having a total value of $180, his liability for tax would be 18 cents.

(c) United States as party to transaction. The United States or any agency or instrumentality thereof shall not be liable for tax in respect of an instrument to which it is a party regardless of the capacity in which it acts. However, the transaction is not exempt from tax, and the nonexempt party to the transaction shall be liable for the tax. The affixing of stamps to the instrument by the United States or any agency or instrumentality thereof does not constitute payment of the tax, and the nonexempt party remains liable for the tax in such case.

(d) State as party to transaction. Except with respect to the tax imposed by section 4361, when a State or a political subdivision thereof, acting in its governmental capacity, is a party to a taxable transaction, under Chapter 34 of the Code, the transaction will not be exempt from the documentary stamp tax merely by reason of the governmental character of one of the parties. The legal incidence of the tax in such a case rests upon the other party to the transaction. However, if in a taxable transaction with a private party, a State or political subdivision thereof is acting in its proprietary function, both parties will be liable for the tax. Where all parties to a transaction are States or political subdivisions thereof, acting in their governmental capacity, no tax shall be imposed. See section 4362(b) and paragraph (b) of § 47.4362-1 for the exemption of any State, Territory, political subdivision thereof, or the District of Columbia from the tax imposed by section 4361 on conveyances of reality to which it is a party, regardless of the capacity in which it acts.

Subpart J—Administrative Provisions Applicable to Documentary Stamp Taxes

§ 47.6001-1 Records of sales and transfers of stock.

(a) Brokers, dealers, etc. All persons who are wholly or partly engaged in