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ATTORNEY GENERAL
STATE OF ILLINOIS

March 2, 1993

FILE NO. 93-002

REVENUE:
Application of Increase
in Real Estate Transfer
Tax to Deeds in Escrow

Honorable David R. Cherry
State's Attorney, Scott County
Scott County Courthouse
Winchester, Illinois 62694

Dear Mr. Cherry:

I have your letter wherein you inquire whether an increase in the real estate transfer tax is applicable to deeds which were executed prior to the effective date of the rate increase, but which were held in escrow and submitted for filing after the change in the real estate tax rate had become effective. For the reasons hereinafter stated, it is my opinion that it is the date of the recordation of an instrument, not the date of its execution, which is determinative of the rate of transfer tax to be imposed. Therefore, a

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deed which is filed after the effective date of an increase in the real estate transfer tax will be subject to the increased tax rate, regardless of when it was executed.

Section 3 of the Real Estate Transfer Tax Act (Ill. Rev. Stat. 1991, ch. 120, par. 1003; 35 ILCS 305/3) provides, in pertinent part:

"A tax is imposed on the privilege of transferring title to real estate, as represented by the deed that is filed for recordation, and on the privilege of transferring a beneficial interest in real property which is the subject of a land trust as represented by the trust document that is filed for recordation, at the rate of 50¢ for each \$500 of value or fraction thereof stated in the declaration provided for in this Section. If, however, the real estate is transferred subject to a mortgage the amount of the mortgage remaining outstanding at the time of transfer shall not be included in the basis of computing the tax.

Such tax shall be collected by the recorder or registrar of titles of the several counties through the sale of revenue stamps whose design, denominations and form shall be prescribed by the Department. If requested by the recorder or registrar of titles of a county which has imposed a county real estate transfer tax under Section 5-1031 of the Counties Code, the Department shall design the stamps furnished to that county under this Section so that the same stamp also provides evidence of the payment of the county real estate transfer tax and shall include in the design of the stamp the name of the county and an indication that the stamp is evidence of the payment of both State and county real estate transfer taxes. * * *

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(Emphasis added.)

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It is axiomatic that where the language of a statute is clear and unambiguous, it will be given effect as written. (West v. Kirkham (1992), 147 Ill. 2d 1, 6.) In reviewing the language quoted above, it is apparent that the real estate transfer tax is a tax which is imposed, inter alia, upon the privilege of transferring title to real property at the time the deed is recorded. Because the real estate transfer tax is not assessable until the deed or other instrument is filed for recordation, it is my opinion that the higher tax rate is applicable to a deed, or other instrument that transfers title to realty, which is filed after the increase in the real estate transfer tax has become effective. The date upon which the instrument was executed is irrelevant to the determination of the amount of tax to be imposed.

This construction of Section 3 of the Act is consistent with opinion No. S-715 (1974 Ill. Att'y Gen. Op. 99), which discussed the nature of the Illinois real estate transfer tax. It was noted therein that the Real Estate Transfer Tax Act (Ill. Rev. Stat. 1991, ch. 120, par. 1001 et seq.; 35 ILCS 305/1 et seq.) was enacted by the Illinois General Assembly when the Federal Documentary Stamp Tax (26 U.S.C.A. §4361 (1967)) expired. Attorney General Scott noted that the Federal tax had applied to any deed, instrument or writing by which realty was conveyed, transferred or assigned regardless

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of whether the writings were recorded. Differentiating the Illinois tax, he advised:

" * * *

* * * The Illinois tax is levied on the 'privilege of transferring title to real estate, as represented by the deed that is filed for recordation.' * * * The scope of the Illinois Act is significantly more restricted than the expired Federal tax. Unlike the Federal tax, it is a tax on the privilege of transferring title to real estate by recorded deed rather than a document tax on any instrument by which an interest in land is conveyed, assigned or transferred.


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(Emphasis added.)

It is apparent from the express language of section 3, as well as from the opinion quoted above, that the imposition of the real estate transfer tax is contingent upon the presentation of the deed or other instrument for recordation. Consequently, it is my opinion that the tax is determined at the time of the recordation of the instrument. If a document is presented for recording on or after the effective date of a tax increase, the higher tax rate will apply to that instrument, regardless of when it was executed.

Respectfully yours,



ROLAND W. BURRIS
ATTORNEY GENERAL