Summary of the Minnesota Mortgage Registry Tax;
Taxation of Non-exempt Mortgages, Mortgage Amendments, and Mortgage Supplements

Taxation of Mortgages

The mortgage registry tax (MRT) is imposed when a mortgage is submitted for recording, based on the amount of debt it secures.[1]

As a general proposition, each discrete mortgage is either subject to tax, or exempted from tax, based on its own attributes and contents.[2] However, it is often necessary to examine more than just the mortgage itself to determine whether, or how, it should be taxed. For example, if a mortgage merely provides security for a debt for which the tax has already been paid, that mortgage is exempt.[3]

Determinations of taxability and tax amounts are made at the time of recording, and do not subsequently change unless the determinations made at the time of recording were erroneous.[4]

> **Example 1.** The subsequent assignment of a previously recorded mortgage, from an exempt mortgagee to a taxable mortgagee, does not revoke or change the exemption that applied to the mortgage at the time it was recorded.
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> **Example 2.** Mortgage1 is recorded securing the repayment of Note1, and Mortgage2 is recorded securing repayment of Note2. The proper tax is paid for recording each mortgage. Later, there is a termination, expiration, and release of Mortgage2; followed at a still later date by the recording of Mortgage3 to secure Note2 (which was never paid off or otherwise satisfied). Mortgage3 is exempt because it provides security for a debt on which the proper MRT was already paid.

If two or more mortgages are executed relatively contemporaneously, and are all intended to secure the same debt, they are treated, for tax purposes, as all a part of the same mortgage. The first one recorded is fully taxed and those recorded subsequently are treated as providing additional security.[5] If the mortgages involve more than one county, and the debt exceeds the statutory threshold, each county should receive a share of the tax receipts;[6] which would not be the case if the two mortgages were separate transactions.

(No) Taxation of Mortgage Amendments

A document that meets the tax-related statutory definition of a mortgage "*amendment*" or "*extension*" is exempt from tax.[7] The statutory definition of *amendment* is quite expansive. For

[1] Minn. Stat. § 287.035.
[2] *Mutual Benefit Ins. Co. v. County of Martin*, 104 Minn. 179, 185, 116 N.W. 572, 575 (1908).
[3] Minn. Stat. § 287.04(c).
[4] An exemption that applies when a document is recorded, will not change after the document in question is recorded, Op.Atty.Gen., 418-a-1, 4/26/1951. However, erroneous overpayments or underpayments of tax may be corrected within three and one-half years under Minn. Stat., § 287.28 & § 287.38.
[5] Op.Atty.Gen. 1916 #548, pg. 335, Dec. 13, 1915. This opinion provides support for taxing a mortgage recorded along with a contemporaneous assignment as if the assigned mortgage were being recorded.
[6] Minn. Stat. § 287.08(d).
[7] Minn. Stat. § 287.04(h) and § 287.01, subds. 2 and 5.

example, a document that changes a mortgage to replace the mortgagor, the mortgagee, and the collateral, fits within the statutory definition.

One rational for the exemption might be that there is no new or additional debt amount against which to apply the tax rate;[8] and, for the MRT there is no alternate amount of tax due when the tax computation for a mortgage results in a tax amount of zero. However, in order for a document that modifies a mortgage without securing a new or increased amount of debt to qualify as an amendment, the debt amount would have to have been properly taxed or exempted initially.

> **Example 3.** A non-exempt mortgage is recorded without payment of MRT. Later, a document is recorded modifying the mortgage to reduce the then-outstanding amount of the secured debt. That document would normally be treated as an amendment, and subject to a tax amount of zero. However, the mortgagor chooses to pay tax based on the outstanding principal debt amount secured by the mortgage after modification in order to have the mortgage provide valid notice of that debt and its associated lien.[9] If less than three and one half years have passed since the original recording, the remaining portion of the original tax amount could also be assessed, with applicable penalties.[10]

> **Example 4.** A non-exempt mortgage that erroneously recited $100 million of secured debt was recorded without the payment of any MRT. None of the parties ever intended for there to be more than $1 million of debt. The recording of a corrective amendment four weeks later, reducing the stated debt amount to $1 million, will be taxable, but only to the extent of the $1 million. The additional tax that would have been due at the original recording cannot be assessed if the $100 million debt never really existed.

Taxation of Mortgage Supplements

A document that modifies a mortgage by replacing or increasing the debt secured by the mortgage, is subject to MRT based on the new debt amounts (unless some kind of exemption applies).[11]

An increase in the principal amount of debt secured by a mortgage can result from either having the mortgage secure additional notes, or from having the mortgage secure increased amounts under the same notes. In the case of a multistate mortgage, an increase in the amount of debt secured by a mortgage can also result from making changes to the encumbered real property such that a larger relative share of the value of the encumbered real property is now attributable to real property located in Minnesota.[12]

Taxation of Mortgage Supplements -- Identifying "New" Debt Amounts

Given this context, where there is generally no tax for recording a mortgage modification document that does not secure new debt, but there is a tax on mortgage modifications that do; it

[8] e.g., Minn. Stat. § 287.05, subd. 8.
[9] Minn. Stat. § 287.10.
[10] Minn. Stat. § 287.13.
[11] "…nor shall a mortgage securing the same and other indebtedness, additional to that upon which such tax has been paid, be taxable hereunder, except for such additional sum." Gen. Stat. of Minn. 1913 § 2301.
[12] Minn. Stat. § 287.05, subds. 1(b) and 2(a).

is often necessary -- for tax purposes -- to determine whether, and by how much, a mortgage modification serves to either replace or increase the debt secured by the mortgage.

For these purposes, a debt is the repayment duty under a particular obligation.[13] In other words, the repayment duty under a particular agreement. Often, the agreement is reduced to writing in the form of a note or bond. In those cases, it is relatively easy to differentiate the debt under one agreement from the debt under a different agreement; and, then to determine whether a particular mortgage secures a new or changed agreement – because each note or bond represents a specific debt. In other cases, it might be necessary to resort to other documentation or evidence in order to identify the debt or debts that are involved.

With regard to mortgage supplements, the term "new debt" refers to all, or a portion, of the principal amount of debt secured by a mortgage after its modification that was not secured by the mortgage before its modification.

> **Example 5.** Mortgage1 is recorded securing the repayment of Note1, and the proper tax is paid. Later, a modification to Mortgage1 is recorded to also secure previously-unsecured Note2. This is a taxable event to the extent of the Note2's debt amount, unless an exemption applies.
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> **Example 6.** Mortgage1 is recorded securing the repayment of Note1, and Mortgage2 is recorded securing repayment of Note2. The proper tax is paid for recording each mortgage. Later, a modification is recorded adding Note2 to Mortgage1. This modification causes Mortgage1 to secure new debt *(i.e.*, a debt that Mortgage1 did not previously secure), However, no MRT is due when this modification document is recorded because of the exemption for instruments that merely provide security for a debt for which the MRT has already been paid[14] (*i.e.*, Note2). The exemption applies whether or not Mortgage2 continues to also secure repayment of Note2.

Taxation of Mortgages Supplements -- Computing "Increased" Debt Amounts

The total amount of debt that is subject to tax as a result of a mortgage being modified is found by subtraction. The following subtractions are performed separately for each discrete nonexempt note, loan, or debt obligation secured by the mortgage being modified. The form of the subtractions is as follows.

> Start with the unpaid principal amount of each note, loan, or debt obligation that will be secured by the mortgage immediately after the document in question takes effect;
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> from each of those amounts, separately subtract the outstanding and unpaid principal amount of that note, loan, or debt obligation, as of the moment in time just before the document in question takes effect, if that amount was secured by the same mortgage.

The sum of the positive numbers that result from each of these debt-specific subtractions is the amount of taxable debt for which the tax must be paid in order to record the document in

[13] Minn. Stat. § 287.01, subd. 3.
[14] Minn. Stat. § 287.04(c).

question, unless an exemption applies. Negative results in the case of one note, loan, or debt obligation, do not carry-over to offset or reduce a positive-number that is obtained for another note, loan, or debt obligation.

Subtrahends[15] greater than zero are recognized only to the extent that either: (1) the tax was paid relative to that debt; or, (2) an exemption applies.

> **Example 7.** A previously recorded and properly taxed mortgage secures a $300,000 loan made on 2/1/2000. The current outstanding principal balance on that loan is $200,000. A modification document for that mortgage is now recorded causing the modified mortgage to secure one-half of the current outstanding principal for the 2000 loan (*i.e.*, $100,000), and to provide real property collateral for the first time for $100,000 of principal debt under a different loan made on 2/1/2012. That is a taxable event to the extent of $100,000. For MRT purposes, this modification reduced the principal amount of debt of the 2000 loan that is secured under the mortgage, for which there are no tax consequences; and, increased the principal amount of debt of the 2012 loan that is secured under the mortgage by $100,000, for which there are tax consequences.

A New Mortgage Compared to a Modified Mortgage

The primary indicator for determining whether the modification of an existing mortgage creates a new, or different, mortgage for MRT purposes is whether the lien under the modified mortgage is a different lien than the lien under the original document.[16] However, as noted above, regardless of whether the instrument in question is a new mortgage or the modification of an old mortgage, the key determinations for tax purposes, are: does the document in question secure a new or increased amount of debt; and, is that debt taxable.

> **Example 8.** An existing and properly taxed mortgage is modified to no longer secure three separate $100,000 loans, but to instead secure for the first time a different $300,000 loan. That is a taxable event to the extent of $300,000 because no part of the $300,000 was previously secured by a taxed mortgage. For MRT purposes, the modification also created a new mortgage because the lien securing repayment of the new loan is a different lien than the one that secured repayment of the three $100,000 loans. This is the result for MRT purposes even if the transaction is a refinancing transaction, or even if the new lien has the same priority as the old lien.
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> If the modification in this example had simply extended the time to repay the original loans, although that would technically fit our definition of a new mortgage,[17] no tax would be due because there is a specific exemption for modifications that merely extend the time within which to repay.[18]

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[15] *i.e.*, an amount that is subtracted from some other amount.

[16] See FN2, and Op.Atty.Gen., 418b-18, 8/23/1967 ("*One* (mortgage) *lien was extinguished… and another was created…*(this results in) *…two subjects of taxation*".)

[17] *Mutual Benefit Life Ins. Co. v. Martin County*, 104 Minn. 179 at 185, 116 NW 572 (1908).

[18] Minn. Stat. § 287.01, subd. 5 and § 287.04(h).

What is the legal status of the Form MRT-1?[19]

All document evaluations, exemption determinations, and tax computations related to the mortgage registry tax can be done by the parties themselves for documents recorded in counties that accept the form MRT-1, if the parties incorporate a properly prepared form MRT-1 as an additional page of the documents to be recorded. The form MRT-1 serves as a certification by the signing party that the mortgage or mortgage-modification documents in question have the tax impact that is indicated on the form. A false or incorrect form MRT-1 is subject to audit within the allowable period, just as a false or incorrect tax payment in the absence of a form MRT-1 would be.

Additional information on the MRT is available at the Department's website.[20]

Comments and questions for the Department, related to these matters, may be directed to Mr. William Lonergan at (651) 556-4721

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[19] Available at: http://www.revenue.state.mn.us/local_gov/mortgage_registry/Pages/Tax-Information.aspx.
[20] http://www.revenue.state.mn.us/tax_prof/Pages/Taxes-by-Type.aspx