



**STATE OF ARKANSAS**  
**Department of Finance**  
**and Administration**

**REVENUE DIVISION**  
**Excise Tax Administration**  
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June 21, 2012

Senator Mary Ann Salmon  
Representative Tommy Lee Baker  
Co-chairmen  
Arkansas Legislative Council  
State Capital Building  
Room 315  
Little Rock, Arkansas 72201

Dear Senator Salmon and Representative Baker:

In accordance with Act 700 of 2011, please find enclosed the report to the Arkansas Legislative Council from the Department of Finance and Administration resulting from an investigation into the possibility of replacing or supplementing the paper Real Property Transfer Tax Affidavit of Compliance and the paper documentary stamps presently used as proof of tax payment for the Real Property Transfer Tax. I have also enclosed a brief summary of the findings resulting from the investigation.

Should you have any questions regarding the report, please contact me through my office at (501) 682-7200.

Sincerely,

Tom Atchley, Administrator  
Office of Excise Tax Administration

Enclosures



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Summary

Real Estate Transfer Tax – Investigation, Findings, and Recommendations

Act 700 of 2011 authorized DFA to investigate the possibility of replacing the real property transfer tax stamps and Affidavits of Compliance with alternative proofs of tax payment and affidavit preparation.

The request for an alternative proof of tax payment was proposed by Representative Barnett with support from the Electronic Recording Commission and from Arkansas Circuit Clerks. DFA is to report the findings of its investigation to the Legislative Council by July 1, 2012.

DFA is proposing to change to a single page proof of tax payment generated for each real estate transfer instead of providing the existing stamps sold at various denominations at Revenue Offices. The new stamp document would be generated at time of tax payment through on-line computer access.

The process will result in considerable savings for businesses acquiring the documentary stamps with less time and business costs associated with courier and delivery services. Taxpayers needing to acquire the documentary stamp at a local DFA Revenue Office may continue to do so but will receive the documentary stamp in the new format.

There is no apparent opposition to replacing current documentary stamps with a single page proof of tax payment and the concept has been very positively received by interested parties to the real estate recording process. All parties participating with DFA with the investigation are in favor of the proposed single page proof of tax payment being available through electronic access and look forward to its possible implementation.

Of the 35 States that impose a state tax on property transfers, the tax is collected at the county recorder's office in the majority of cases. While some states use stamps that are affixed to the recorded instrument, many use an attached single page document or a document imprint to prove tax payment. Although Wisconsin's real estate transfer tax is collected by the Register of Deeds, a single page document reflecting tax due must first be acquired from the state using electronic on-line access. This document must be included in the file at time of recording. This is a similar approach being recommended for Arkansas but with tax payment being received by the State at the time of document acquisition.

With DFA no longer purchasing the documentary stamps, approximately \$15,000 per year in annual costs for printing and purchasing will be eliminated. Inventory control and audit functions related to stamp inventories at DFA Revenue Offices will also end.

Taxpayers maintaining stamp inventories on consignment from DFA will no longer file monthly tax and inventory reports. The annual inventory audits conducted by DFA at their businesses will no longer be required.

Single page proof of tax payment has been in use for several years by DFA for large dollar real estate transactions. This proposal will bring this concept to all documentary stamps issued.

The change to a single page proof of payment will have no additional computer system costs for DFA by including the development and implementation of this process within the new DFA Revenue Office computer system which is currently under development.

Implementation of this proposed change would occur at the same time as the new Revenue Office computer system which is scheduled for operation in the Fall of 2013.

**Act 700 of 2011**  
**Arkansas Real Property Transfer Tax**  
**DFA Report to the Arkansas Legislative Council**

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**PREPARED BY**  
***Arkansas Department of Finance and Administration***

June 2012

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## Summary

The Real Property Transfer Tax, codified in Title 26, Chapter 60 of the Arkansas Code, provides for the levy of state taxes on real property transfers. The Code provisions also provide for the use of affidavits to establish eligibility for exemptions from the tax; use of documentary stamps to reflect tax payment; and provisions regarding the distribution of the state tax revenues collected.

Act 700 of 2011 amends certain sections within Title 26, Chapter 60 to authorize the Department of Finance and Administration (DFA) to establish alternative real estate transfer tax documentary symbols and electronic affidavits of compliance for tax exemptions claimed. The Act provides that DFA may investigate the possibility of replacing or supplementing the paper “Real Property Transfer Tax Affidavit of Compliance” and the paper documentary stamps presently used as proof of tax payment. If an investigation is performed by DFA, it is to be completed by July 1, 2012 with the findings being reported to the Arkansas Legislative Council.

During 2011, personnel from the Department of Finance and Administration were assigned the responsibility of performing a review of the real property transfer tax and the current administrative practices and procedures for the tax. This review continued through the spring of 2012 and included interviews and discussions with interested parties with the goal of evaluating for modernization of the system.

A simpler method to acquire the necessary documentary stamp was the most common request of the study participants. Elimination of monthly tax reporting and compliance auditing would enhance the business practices of title companies and entities that maintain stamp inventories on consignment. From interviews with DFA Revenue Office management and staff members, an enhanced system to allow issuance of the documentary stamps without the difficult processes related to inventory control and the related accounting functions would be beneficial. Although Circuit Clerks would not see direct benefits from a different method for stamp acquisition, reduced time and costs for those entities needing the stamps would enhance the overall filing process.

The findings of this investigation result in a proposed change in the method of documentary stamp issuance by DFA. On-line, direct purchase of a one-page documentary stamp on an as-needed basis for each specific transfer instrument would be developed and implemented. A process of this type offers significant benefits to title and closing companies, attorneys at law and other preparers of the transfer instruments and would be a much simpler, cost efficient and time saving method. For those not desiring to purchase on-line, availability of documentary stamps at DFA Revenue Offices would continue but in the revised one-page format.

Implementation of a revised documentary stamp issuance process of this type requires computer systems development and implementation. DFA is currently in development of a revised computer

system for use in DFA Revenue Offices with an anticipated implementation date in the Fall of 2013. Changes to incorporate this proposal would be included within that development and have the same implementation date.

This report reflects the findings of DFA resulting from a review and investigation into current practices and procedures of title companies, attorneys at law, county recorders and other interested parties to the process of filing and recording paper and electronic warranty deeds; payment of the real estate transfer tax; and administrative procedures of DFA regarding the tax.

## History

The Arkansas Real Property Transfer Tax was first imposed by Act 239 of 1969. The tax was levied at the rate of \$1.50 for each \$500 of the transfer price. To provide proof of tax payment at the time of recordation, documentary stamps were made available for purchase at local DFA Revenue Offices. The County Recorder of Deeds was required to ensure that the stamps were affixed to the deed instrument at the time of recording. The Act was repealed in 1971 after it was determined that authority for state agencies to pledge portions of the tax for the payment of revenue bonds violated Ark. Const. Amend. 20. *Borchert v. Scott*, 248 Ark. 1041, 460 S.W. 2d (1970)

The existing Arkansas Real Property Transfer Tax was imposed by Act 275 of 1971 and codified as Ark. Code Ann. § 26-60-101 et seq. The tax is levied on each deed, instrument or writing by which lands, tenements, or other realty is granted, assigned, transferred or conveyed for a consideration that exceeds one hundred dollars (\$100.00). The tax was originally levied at the rate of \$1.10 per \$1,000 of consideration but with rate increases in 1987 and 1993, it is currently levied at the rate of \$3.30 per \$1,000 of consideration. Unless agreed upon otherwise, the tax is to be paid one-half (½) by the grantor or seller of the property and one-half (½) by the grantee or purchaser.

Exemptions from the tax are provided for certain real property transfers. These include transfers to or from governmental entities; instruments conveying land sold for delinquent taxes; instruments conveying leasehold interests; conveyances of rights to remove timber; instruments dividing marital property resulting from divorce; and conveyances of homes financed by the Federal Housing Administration, the U.S. Dept. of Veterans Affairs, or the U.S. Dept. of Agriculture Rural Development to first time home buyers if the sales price is less than sixty thousand dollars (\$60,000).

The Code provisions require DFA to design the “Real Property Transfer Tax Affidavit of Compliance” form and documentary stamps to provide proof of tax payment for use when recording the transfer instruments. The Affidavit of Compliance form is used to provide proof of entitlement for exemption when the transfer is not clearly exempt from taxation and may be required by the County Recorder. When prepared, the affidavit includes information regarding the identities of the seller (grantor) and buyer (grantee), the amount of consideration for the sale, date of the transfer and the county in which the property is located. If the real property transfer is exempt from taxation, the affidavit reflects that fact and is signed by the grantee or the grantee’s agent.

Since the original tax levy in 1969, documentary stamps have been provided by DFA to grantors/grantees to substantiate payment of the transfer tax. The documentary stamps are available for purchase at all DFA Revenue Offices, and through a consignment arrangement, may be acquired from title companies, banks, and savings and loan associations that wish to maintain stamp inventory. The stamps are similar in size to U.S. Postal stamps and are generally placed on the face of the transfer instrument by the preparer of the document. The stamps must be attached prior to the instrument



recording with the County Recorder. Upon receipt of the instrument by the County Recorder, the stamps are cancelled by the Recorder by marking through the attached stamps thereby eliminating any possible re-use.

At the time of recording a transfer of real property, the buyer (grantee) or their agent furnishes proof of tax payment or proof of exemption by submitting required amounts of documentary stamps and/or an Affidavit. As an alternative to the Affidavit being prepared and provided as part of the instrument filing, and if the County Recorder does not doubt the eligibility for an exemption, Ark. Code Ann. § 26-60-110 provides that a statement may be added to the transfer instrument certifying that the amount of documentary stamps attached is correct. The statement must be signed by the grantee or the grantee's agent. The use of the certifying statement is the more common method and has replaced the use of the Affidavit in the majority of recordings.

Since 1971, the Real Property Transfer Tax has undergone various amendments that changed the tax rate; added additional types of transfers that would be exempted from taxation; added requirements for submission of affidavits to prove exemptions; and providing alternative procedures to the requirements for affidavits. The issuance of documentary stamps by DFA to be placed on the instrument prior to its recordation by the County Recorder has not changed since the inception of the tax. The requirements placed on the County Recorders to confirm the attachment of the required documentary stamps to the instruments and to cancel the stamps from future use also continues as originally enacted.

#### Legislative Changes and Amendments

Act 275 of 1971 which repealed Act 239 of 1969 also imposed a transfer tax equal to \$1.10 for each \$1,000 or fractional part thereof of the transfer price. The Act required that the County Recorder of Deeds for each county to maintain an inventory of documentary stamps available for sale to the general public and to remit the taxes collected on a monthly basis to the Commissioner of Revenues.

Act 398 of 1971 amended Act 275 of 1971 to remove the requirement that the County Recorder of Deeds would sell the documentary stamps. Act 398 provided that the stamps would be available at local DFA Revenue Offices and provided that a County Recorder had the option to sell the stamps on a consignment basis.

Act 754 of 1983 added provisions prohibiting County Recorders from accepting any deed for recording which did not contain a sworn Affidavit by the grantor stating that the proper amount of tax had been paid or that no tax was due.

Act 926 of 1985 provided an amendment to add additional types of exempt transactions and to prohibit the County Recorder from accepting any instrument upon which documentary stamps are attached unless the stamps are clearly visible.

Act 1063 and Act 1081 of 1985 provided an alternative to providing an Affidavit at time of recording to allow the following statement to be added to the face of the instrument and signed by the grantee or the grantee's agent: *"I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument"*. If the Recorder has doubt as to a tax exemption being claimed on a transaction, the Recorder may require submission of the Affidavit prior to the recording.

Act 642 of 1987 added an additional tax of \$1.10 deemed as special revenues to make a total tax rate due of \$2.20 for each \$1,000 consideration or fractional part thereof.

Act 1181 of 1993 added an additional tax of \$1.10 to make the total tax due equal to \$3.30 for each \$1,000 or fractional part thereof.

Act 1299 of 1995 amended the language regarding the alternative statement that replaces the requirement for submitting an Affidavit to state that the grantee certifies that the legally correct amount of documentary stamps is attached and removed the language that "at least" the legally correct amount are attached. The revised alternative statement states *"I certify under penalty of false swearing that the legally correct amount of documentary stamps have been placed on this instrument"*.

Act 260 of 2005 allowed title companies to purchase real property transfer tax stamps on consignment from DFA in the same manner as banks had previously.

## **Documentary Stamps and Certificates of Compliance – Existing Processes**

### **Department of Finance and Administration**

#### **DFA Process to Sell Documentary Stamps**

In accordance with the Arkansas Real Property Transfer Tax, Ark. Code Ann. § 26-60-101 et. seq., the Department of Finance and Administration (DFA) provides documentary stamps that are used to establish proof of tax payment for real property transfers. The stamps are to be placed on the real estate transfer instruments prior to submission to Arkansas Circuit Clerks for recording. The stamps are available for purchase at all DFA Revenue Offices and through consignment arrangements with title companies, banks, and savings and loans associations throughout the state.

The documentary stamps are made available in denominations ranging from \$1.10 to \$1,100 with stamp dimensions being similar to postal stamps. Purchasers acquire a selection of stamps in various denominations with the combined total value of all stamps attached to the real estate transfer instruments being equal to the total tax due of \$3.30 per \$1,000.00 of consideration.

#### **Acquisition of Real Estate Documentary Stamps at DFA Offices**

Title and closing companies, attorneys at law, and other parties having the necessity to acquire documentary stamps for real estate transfers acquire the stamps at local DFA Revenue offices located in cities throughout the state. At the time of purchase, a specific dollar value of stamps may be requested by the purchaser or if desired, the amount necessary will be calculated by the DFA representative if the total amount of consideration for the real estate transfer is provided. Multiple stamps are necessary for almost all transactions in order to have stamps equal to \$3.30 per \$1,000.00 of consideration.

Out-of-state title companies and other out-of-state purchasers not having access to local DFA Revenue offices acquire the necessary documentary stamps through direct purchase request to DFA's Miscellaneous Tax Section. Upon receipt of a purchase request and submission of tax payment, the documentary stamps are mailed to the requesting party. The requesting party is asked to provide a postage paid, self-addressed return envelope for the mailing.

The documentary stamps are acquired by DFA in pre-numbered format with the distribution of the stamps to DFA Revenue Offices and consignment participants using the stamp numbers for inventory control. The stamp inventories maintained at DFA local revenue offices and sales of stamps from these inventories reflect the stamp identification numbers with established and necessary accounting,

cash control and inventory control procedures being followed. Audits are performed by DFA Internal auditors to verify stamp sales, cash receipts and inventories.

In recent years, DFA has provided an alternative to acquiring the traditional documentary stamps when the consideration for the real property sales transaction is large and the use of the preprinted stamp denominations would result in multiple stamps or pages of stamps being required for attachment to the transfer instrument. The use of this alternative has been of benefit to title companies, attorneys and other preparers when the total consideration for the sale totals millions of dollars. Upon receipt of a purchase request, DFA's Miscellaneous Tax Section prepares a one-page stamp document specifically prepared for the transaction that includes information as to the identities of the grantor and grantee, the consideration for the sales transaction and the exact dollar amount of the documentary stamp purchase.

### Affidavits of Compliance

Affidavits of Compliance are provided to title companies, attorneys at law and other parties preparing transfer instruments for recording. The affidavit allows the user to state that the correct amount of documentary stamps are attached to the instrument and to reference the eligible exemption from tax when applicable. Exemptions applicable to the Real Estate Transfer Tax include:

1. A transfer to or from the United States, the State of Arkansas, or any of the instrumentalities, agencies, or political subdivisions of the United States or the State of Arkansas;
2. Any instrument or writing given solely to secure a debt;
3. Any instrument solely for the purpose of correcting or replacing an instrument that has been previously recorded with full payment of the tax having been paid at the time of the previous recordation;
4. An instrument conveying land sold for delinquent taxes;
5. An instrument conveying a leasehold interest in land only;
6. An instrument, including a timber deed, that conveys or grants the right to remove timber from land if the instrument grants or conveys the right to remove the timber for a period of not to exceed twenty-four (24) months;
7. An instrument given by one (1) party in a divorce action to the other party to the divorce action as a division of marital property whether by agreement or order of the court;

8. An instrument given in any judicial proceeding to enforce any security interest in real estate when the instrument transfers the property to the same person who is seeking to enforce the security interest;
9. An instrument given to a secured party in lieu of or to avoid a judicial proceeding to enforce a security interest in real estate;
10. An instrument conveying a home financed by the Federal Housing Administration, the United States Department of Veterans Affairs, or the United States Department of Agriculture Rural Development, if the sale price of the home is sixty thousand dollars (\$60,000) or less and the seller files with the county recorder of deeds a sworn statement by the buyer stating that neither the buyer nor the spouse of the buyer has owned a home within three (3) years of the date of closing and also stating the sale price of the home;
11. An instrument conveying land between corporations, partnerships, limited liability companies, or other business entities or between a business entity and its shareholder, partner, or member incident to the organization, reorganization, merger, consolidation, capitalization, asset distribution, or liquidation of a corporation, partnership, limited liability company, or other business entity; and
12. A beneficiary deed.

Acts 1063 and 1081 of 1985 provided an alternative to providing an Affidavit at time of recording which has resulted in the majority of instrument recordings not having an attached Affidavit of Compliance. A statement is added to the instrument certifying that the correct amount of documentary stamps, if any, is correct. DFA maintains Affidavits of Compliance forms at DFA Revenue offices for distribution when requested.

## County Recorders / Circuit Clerks

All Arkansas Circuit Clerks are charged with the responsibility to record real estate transfer instruments. The Clerks receive recording fees from those submitting the instruments. Internal office procedures to perform the recording function may vary with some clerks continuing the traditional manual paper system of recordation while others have progressed to receipt of electronic submissions.

At the time of the recording, the Clerk's responsibilities include cancelling the documentary stamps that accompany the filing and verifying the inclusion of an Affidavit of Compliance or the alternative statement attesting to the proper amount of stamps being attached. The Clerk marks through the stamps which eliminates any possible reuse. The Clerk also reviews the instrument and if there is any doubt as to the exempt status of a filing, the Clerk may require the submission from the grantee an Affidavit of Compliance reflecting the nature of the exemption claimed.

In recent years, an alternative to the manual, paper document process has been developed and implemented by approximately fifty Arkansas Circuit Clerk's offices. These offices have acquired computer software and storage technology to allow images to be made of the paper documents and to record the documents as electronic computer files. Upon presentation of the paper hard-copy instrument at the Clerk's office, an image file is created by the Clerk and the recording is completed. The computer software allows for the indexing of the recorded files and allows for research and retrieval of the recordings with Internet access to the information being possible.

After acquisition and implementation of these electronic image recording systems, some Clerks have begun the processes of placing within their electronic systems images of historical paper instruments recorded in previous years. These previously recorded paper instruments are being retrieved and imaged by the Clerk and placed within their electronic system. Maintaining the recordings in electronic file formats reduces the significant burden and costs associated with the storage and retrieval of the paper documents. Maintaining electronic images also reduces the risk of loss for aged and frail paper documents while also allowing off-site, secure back-up storage of the instrument recordings.

## Electronic Submission of Instruments for Recordation

Some of the Arkansas counties that have implemented electronic file preparation and storage of instrument recordings have taken the additional step of allowing the electronic submission of the image files directly to the Clerk's office for recording. As of May 2012, eleven Arkansas counties are accepting and receiving electronic image files for recording through companies providing electronic filing services for their submitting clients. The Clerk's have agreements with these third party service providers that not only allow for the submission of the electronic image files for recording but also include responsibilities for collection of the Clerk's recording fees for the transactions. Arkansas

counties currently receiving electronic image files for recordation include: Benton County, Boone County, Bradley County, Desha County, Garland County, Madison County, Miller County, Pulaski County, Sebastian County, Union County, and Washington County. The percentage of the instruments received for recording through electronic submission in these counties is increasing and varies from a low of 5% to a high of approximately 40% of total instruments received. Benton County has the highest percentage of instruments being submitted electronically for recording.

Through the companies that provide electronic filing services, the Clerks receive electronic image files, which after review and acceptance, are placed directly into the Clerk's electronic recording systems. The Clerk's offices are not provided paper documents of any type for these recordings with the electronic image file containing each page of the instrument with images of the attached Real Estate Transfer Stamps and Affidavits also being included. Upon accepting the electronic filing, the Clerk's computer systems provide confirmation to the submitting party that the recording has occurred and with indication as to the amount of recording fees that are due. The third party providers collect these recording fees from their submitting clients for deposit to the accounts of the Clerks.

The ability to create, record, store and retrieve electronic images of paper documents is being implemented by Arkansas Circuit Clerks as resources allow for the acquisition of the necessary computer software and hardware products. For those Clerk's offices that have the necessary systems in place, implementing receipt of electronic image filings directly from electronic recording service providers is also a growing method of submission.

## Title Companies, Closing Companies, Attorneys at Law, Electronic Filing Services Providers

The preparation of real estate transfer instruments continues today in the same general manner as in the past. Paper, hard-copy documents are prepared for submission to the Circuit Clerk for recording. Changes in the method and the process for submitting the instruments for recording are occurring in some Arkansas counties as the electronic filing of images of the original paper documents is being implemented to replace the necessity to deliver the paper documents to the Clerk's office.

When paper documents are delivered to the Clerk's office for recording, real estate transfer stamps and/or Affidavits of Compliance are attached. The preparers of the instrument have previously acquired the transfer stamps by direct purchase at a local DFA Revenue Office or through other vendors maintaining stamps through a consignment process with DFA.

When recording in a county where electronic filing is available, instead of delivering the paper documents to the Clerk, the preparer of the documents creates an electronic image file of the original paper documents for submission to the Clerk. Through a third party service provider as authorized by the Clerk, the electronic image file is transmitted to the Clerk for approval and recording. Upon approval, the electronic image file is then placed into the computer systems maintained by the Clerk for the recording of the instruments.

After recording, the Clerk's computer system provides information back to the third party service provider confirming receipt of the filing and providing information regarding the amount of recording fees due. The service provider then provides this information to their client title company and collects the recording fees for deposit to the account of the Clerk.

Title companies participating in the electronic filing process, in those Arkansas counties where electronic filing is available, pay fees to the service provider for submitting the electronic files. The fees charged to title companies by the service providers reduce or replace the costs and time associated with delivering paper documents to the Clerk's office. For those title companies and other parties preparing instruments for recording in several counties, the use of electronic filing in some counties while delivering paper documents to others impacts the decision to begin the electronic filing processes.

## Acquisition of Documentary Stamps

Unless an exemption applies, title companies, attorneys and others preparing real estate transfer instruments must purchase Documentary Stamps to establish proof of payment of the Real Estate Transfer Tax. Documentary stamps in denominations ranging from \$1.10 to \$1,100 are available at



DFA Revenue Offices during the established office hours for the location. For transactions with large consideration, a special stamp prepared for the exact dollar amount needed may be acquired from DFA in Little Rock to avoid requiring multiple stamps or pages of stamps being attached for recording. Generally, purchasers acquire the necessary stamps for each specific real estate transfer by traveling to a DFA Revenue Office for the purchase.

### Stamp Inventory Consignments

Ark. Code Ann. § 26-60-109 provides the authority for issuance of documentary stamps on a consignment basis to title companies, banks and savings and loan associations. Companies electing to maintain a stamp inventory on a consignment basis are furnished a stamp inventory by DFA and file monthly tax reports reflecting stamps sold and used. Payment for the stamps is made at the time of filing the monthly report. As needed, stamp inventories are restocked by DFA. Title companies are the primary participants in the stamp consignment process. Maintaining a stamp inventory on consignment eliminates the need to travel to a local DFA Revenue office to acquire stamps as instruments are being prepared for filing.

Although the consignment process offers convenience in acquisition of documentary stamps, some of the larger title companies in Arkansas do not participate. These companies have preferred to make direct purchases of stamps in large quantities at local DFA Revenue Offices and maintaining their own inventories using company funds. By maintaining their own inventories, the companies avoid the necessity of filing monthly tax reports and the related audit process while still enjoying the convenience of not having to travel to a DFA Revenue Office to acquire stamps for each instrument. Companies maintaining their own inventories do have increased risks of financial loss in case of misplaced stamps, theft, fire, or loss through other unforeseen circumstances and events.

### Electronic Recording Service Provider Vendors

The Arkansas Circuit Clerks that have begun the processes of accepting electronic file submissions for recording of real estate transfers work through third-party E-Recording vendors. These vendors provide electronic filing services for the Clerks with the filings being a paperless process with the Clerks receiving only images of the original paper documents that were prepared at the time of the real estate transfer closing.

After the preparation of the electronic image file by a title company, closing company, bank, law firm, etc., the file is transferred by secure Internet connection to the E-Recording vendor. After receipt of the electronic file, the vendor forwards the file to the Clerk for recording into the computer systems maintained by the Clerk. In a matter of seconds, the imaged documents are sent to the vendor and

subsequently filed with the Clerk's office. After recording, a delivery notification is provided by the Clerk to the E-Recording vendor for subsequent notification to the vendor's submitting client bank, title company, etc. Recording fees charged by the Clerk are also processed by the E-Recording vendor and deposited to the account of the Clerk. The total process is accomplished in seconds versus hours and/or days for the manual delivery of paper documents to the clerk's office for the recording. Although fees are charged by the E-Recording vendors to their submitting client, the client benefits from the elimination of delivery and courier charges, postage, and other costs.

The E-Recording processes being implemented by Arkansas Clerks mirror the processes being implemented in other states with original paper documents being prepared and images created. After creation, the images are forwarded for recording. Some states require the Clerk to collect the state tax at the time of recording but the implementation of electronic processes do not require any change in the Arkansas tax collection method.

Several E-Recording vendors have agreements with Arkansas Clerks that allow the vendors to submit electronic files for recording. Some of the companies providing the electronic recording services include: Simplifile, Landata, U.S. Recordings, ACS, and Ingeo.

## **Neighboring States – Real Estate Transfer Taxes**

Oklahoma and Tennessee levy real estate transfer taxes with some similarities to the Arkansas tax. However, in these states the tax is collected by county government officials instead of the State. The neighboring states of Louisiana, Mississippi, Missouri and Texas do not have similar tax levies on real estate transfers.

The Oklahoma real estate transfer tax is levied at the rate of .75 cents per \$500 of consideration. County clerks sell documentary stamps at the time of instrument recording and report the tax to the Oklahoma Tax Commission. Metering machines may be used to print single stamps for total tax due or multiple preprinted stamps may be attached. Notations are placed on the face of the transfer instrument stating the reason for any exemption claimed.

Tennessee levies a conveyance tax of .0037 per \$1,000.00 of consideration. The tax is collected by the County Register of Deeds at the time of recordation. For paper filings, decals are provided and attached to the document to reflect the tax payment. The decal contains certain identifying information. Electronic submissions of image files are also accepted by some counties from title companies but not from individual taxpayers. An indicator is placed on the image with similar information as the transfer decal reflecting that the tax is paid. The County Register of Deeds receives a 2.4% commission for collecting the taxes and creating the transfer stamps.

## Findings

The recording of real estate transfer instruments is changing in Arkansas. Circuit Clerks are implementing recording systems that allow the Clerks to accept paper documents for recording, make electronic image files of the paper documents, and accept the electronic image files as the recorded instrument. The computer systems being implemented allow for the storage and retention of the recordings and provide the ability for subsequent retrieval, research and viewing through computer systems and Internet access. Limited resource availability impairs some counties in acquiring the computer systems necessary for this method of recording.

In those counties where electronic recording and retention systems have been acquired and implemented, additional processes to allow the submission of electronic image files directly to the Clerk through contracted third-party service providers has eliminated the necessity to deliver the original paper files to the Clerk. Although only eleven Arkansas counties currently accept the submission of electronic image files for recording, the number of implementing counties continues to grow with assistance and promotion through activities of the Arkansas Electronic Recording Commission and its leadership.

The current process of acquisition of real estate transfer documentary stamps from the Department of Finance and Administration does not directly impact the electronic recording processes that are currently being implemented by the Clerks. The documentary stamps are acquired from DFA for placement on the paper documents prior to their imaging and the creation of the electronic file that is submitted through the Clerk's electronic recording processes. If delivering paper documents to the Clerk, attachment of the documentary stamps prior to their delivery continues, not impacting any subsequent electronic file creation by the Clerk.

Of interest to DFA was the possibility of future instrument recordings where only data elements are submitted to the Clerk's computer systems for recording with no original paper documents having been prepared for delivery or images made for the current electronic filing processes. In discussing this possibility with the title companies, closing companies and others preparing the instruments, indications were that this possibility is not in the foreseeable future. This possible method would require many changes affecting all parties receiving documents through the closing process and it is thought that original signatures by the participants would in all likelihood always be required.

The existing DFA processes to acquire the necessary documentary stamps can be time consuming and in the majority of cases, require purchasing the stamps at a local DFA Revenue office. The existing consignment process for title companies, banks, and savings and loan associations requires monthly tax reporting with annual audits to confirm compliance. Because of these limitations, some title companies do not participate in consignment preferring to invest company funds in inventory in order to avoid the process.

In discussions with Circuit Clerks, attorneys at law, title companies, closing companies, and companies providing electronic filing services, the desire of providing an easier method to acquire the necessary documentary stamps could enhance the overall filing process. During our discussions, Circuit Clerks indicated their opposition to any proposal requiring their selling of documentary stamps at the time of recording. Although this method exists in some other states and would eliminate the necessity of acquiring documentary stamps at DFA Revenue Offices, Arkansas has not had this requirement in the past and the changes being made for the filing of electronic images of paper files does not necessitate this approach. Although not anticipated, any future change in recording methods and technologies that would provide for the recording of data elements only with no original paper documents or image files being created could result in a recommended change of responsibility for collecting the tax to the Circuit Clerk's offices in order to insure compliance and state tax payment.

DFA brought forward for discussion the possibility of acquiring the necessary documentary stamp through an on-line acquisition and purchase process. If developed, title companies, closing companies, attorneys at law and other parties needing documentary stamps would access the system, purchase the necessary stamp and pay the tax as needed. A single page document would be printed representing the documentary stamp for inclusion with the documents submitted for recording with the stamp document referencing necessary identifying information and would be created for the exact dollar value amount needed for the consideration of the transaction. For those needing documentary stamps on an occasional basis or for those preferring not to purchase on-line, acquisition of the document could be acquired at DFA Revenue Offices in the same format. The overall consensus by interviewees was very favorable to this approach. If developed and implemented, those interviewed thought many positive benefits would be the result including:

- Reducing the necessity of traveling to a local DFA Revenue Office. A customer could obtain a transfer stamp from their own computer system. Acquisition at a local DFA Revenue Office would continue for those needing this service.
- Reducing the risk of loss due to misplaced or lost stamps after bulk purchases.
- Providing a convenient method for out-of-state purchasers to acquire the documentary stamps.
- Title and Closing companies could print the necessary documentary stamp while their customers are in their office without the need for buying stamps directly from a local revenue office.
- There would no longer be the need for inventory reports and audits related to the consignment of stamps at title companies, banks, law offices, or closing companies. The consignment process would end.

- The placement of multiple stamps for multiple denominations on warranty deeds is a tedious and archaic method which can easily be enhanced with the use of a single documentary stamp.
- Title companies that purchase large amounts of stamp inventory will not have to tie-up their company funds in inventory with the related risk of loss.
- No matter the time of day, purchase of stamps on-line would be quick, economical, and safe.

DFA would also benefit from the development of a system of this type.

- The processes of maintaining an inventory of stamps at DFA Revenue Offices would be phased out.
- The internal audit processes for verifying stamp inventory and related inventory control processes would no longer be necessary for DFA Revenue Offices and consignment taxpayers.
- Compliance verifications would be easier with specific stamps prepared for specific real estate transfers to be recorded in the identified counties.

## **Recommendations**

The investigation into current procedures and practices for businesses involved in the preparation and submission of real estate transfer instruments reflects that manual preparation of the instruments will continue. As electronic record retention systems are being implemented at Circuit Clerks' offices, the option to add processes allowing direct electronic submission of images of paper files for recording can be implemented. Because both manual and electronic filings begin with the preparation of paper documents with original signatures being required by the recording parties, the option of electronic affidavits with electronic signatures and the issuance of electronic symbols replacing the current documentary stamps does not fit with the current recording practices. However, as an improvement to the current process, DFA and those interviewed during this investigation propose a different method of acquisition and purchase of documentary stamps.

### Alternative Real Property Tax Proof of Payment

Real property transfer stamps are now purchased either on a consignment basis by certain companies or as needed from a local DFA Revenue Office. It is proposed that acquisition of the documentary stamp and payment of the real estate transfer tax be made available through on-line acquisition. With modifications, existing DFA computer systems that allow direct on-line taxpayer access can provide this service.

All businesses that routinely purchase real property transfer tax stamps, whether on consignment or directly from DFA Revenue Offices, would be impacted. Convenience of on-line acquisition and payment with reduced time and other related costs would be of benefit. Acquisition on a twenty-four hour basis would also be of assistance with no monthly tax reports with subsequent consignment audits required. Individuals, businesses, and other parties requiring the transfer stamps on a less frequent basis could still acquire the necessary documentary stamp through their local DFA Revenue Office if desired.

For those purchasing on-line, the purchaser would access DFA's Taxpayer Access Point, the existing DFA computer system's access that allows taxpayers to file electronic tax reports and make payments. Data to be imputed to create the document would include the grantee and grantor identification, county where the real estate transfer instrument will be recorded and the amount of consideration paid for the transfer. The system would calculate the amount of tax due and allow for the payment of the tax and the subsequent printing of a one-page document representing the documentary stamp. The information included on the documentary stamp page would be specific to the real estate transaction for which it is created and could not be used on any other transfer instrument.

Ark. Code Ann. § 26-60-109 provides authority for the Director of the Department of Finance and Administration to design the documentary stamps used in administration of the real estate transfer tax. No amending legislation is required for DFA to provide documentary stamps in the format and manner as recommended.

Direct costs incurred at present in the printing and purchasing of documentary stamps by DFA are approximately \$15,000 on an annual basis. These costs would be eliminated through implementation of the proposal. Additionally, elimination of tax report processing of reports received from consignment taxpayers and the related inventory audits by DFA would be beneficial.

The documentary stamps currently in use were designed to be placed on the face of the transfer deed instrument thereby having no impact on the process of collecting recording fees by the Circuit Clerk for the pages submitted. The recommendation for a separate stamp documentary page will result in an additional page to be recorded. The General Assembly may want to consider legislation to provide that the recording fees of the Circuit Clerk would not be applicable to the page documenting state tax payment.

#### Alternative Real Property Tax Affidavit of Compliance

Currently, the paper form of the Affidavit of Compliance is available statewide at local DFA Revenue Offices, as well at county clerks' offices and from other interested parties that have requested the form. DFA proposes that the current paper form concept be continued but also be made available through DFA's Taxpayer Access Point in the same manner that will be used to acquire the documentary stamp page.

Existing Arkansas code provisions do not require the submission of the Affidavit for each filing but when included, becomes a page within the documents filed with the Clerk. It is anticipated that for on-line acquisitions of the Affidavit, an Affidavit for the specific real estate transfer would be created with identifying grantee / grantor information and a statement as to the reason for any tax exemption claimed.

Data to be imputed on-line to create the Affidavit of Compliance would include the grantee and grantor identification, county where the real estate transfer instrument will be recorded and the nature of any tax exemption claimed. The information included on the Affidavit would be specific to the real estate transaction for which it is created and would not be beneficial for use on any other real estate transfer.

DFA notes that for the majority of filings in Arkansas where no documentary stamps are attached, the alternative statement is being provided in accordance with Ark. Code Ann. § 26-60-110 instead of the Affidavit of Compliance. The alternative statement is a certification by the grantee that the proper



amount of documentary stamps, if any, are attached to the filing. When using the alternative statement, the type of exemption claimed is not known by the Circuit Clerk or by DFA. In many cases, this leaves doubt as to the exemption eligibility. Consideration of requiring the Affidavit on all filings with the reason for any tax exemption claimed being specifically stated would potentially enhance compliance for the tax.

### Timeline for Implementation

Initial discussions to determine feasibility of the electronic, on-line acquisition approach have been held with DFA's Office of Information Services, DFA's internal computer systems development team, and with DFA's computer systems provider, Fast Enterprises, Inc. Favorable responses have been received as to the ability to develop a system providing the described features.

Because of the integrated nature of DFA tax reporting systems, cash control systems, and DFA Revenue Office systems, implementation of this proposal will require its inclusion within the computer system currently being developed for use by local DFA Revenue Offices. The new DFA Revenue Office computer system will provide computer services for all functions performed at DFA Revenue Offices. Including the real estate transfer tax processes within the new Revenue Office system is required in order to maintain the ability to purchase the documentary stamp at a local DFA Revenue Office. This new computer system implementation is scheduled for the Fall of 2013 which would also be the effective time for implementing the new documentary stamp page processes from within the on-line tax reporting systems.

## **Acknowledgement**

The Department of Finance and Administration wishes to thank the following Arkansas Circuit Clerks, Real Estate Title and Closing company representatives, the Arkansas Bar Association, and industry representatives of electronic filing services providers for their commitment of time and participation in this review of the Arkansas Real Estate Transfer Tax.

Honorable Phyllis Villines  
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Honorable Sharon Blount  
Crawford County Circuit Clerk

Honorable Rita Reyenga  
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Members of the Electronic Recording Commission

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Quattlebaum, Grooms, Tull & Burrow PLLC  
Little Rock, Arkansas

Ms. Barbara Warren  
Conway Title Company

Mr. Jeremy Thornton  
Mena Title Company

Mr. Matt Kendall  
Waco Title Company

Ms. Cherry Robinson  
Waco Title Company

Mr. C. Wesley Lasseigne  
Lenders Title Company

Mr. Chuck Dyer  
Edwards Title & Abstract Company

Ms. Kim Majors, Executive Director  
Arkansas Land Title Association

Mr. Jeff Sikes, Legislative Director  
Association of Arkansas Counties

Ms. Barbara McLean  
Simplefile

Mr. Peter Herget  
Simplifile

Mr. Mark Wingfield  
Dynamic Info Solution Company, Inc

Mr. Barry Barber  
McKenzie Abstract and Title Company