

Equitable Development Toolkit

Real Estate Transfer Taxes

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What Is It?

Real estate transfer taxes (RETTs) (also known as "real property transfer taxes") are state, county, and/or municipal sales taxes most often used as general revenue. However, RETTs, can be devoted to specific uses such as affordable housing development or open space protection.

When RETTs are used to provide affordable housing or other community benefits to neighborhoods receiving an influx of investment, they can be a powerful form of value recapture, raising additional revenue as investment bolsters land value, because they are usually based on the sales price, and paid every time a property is sold. Florida, with its vibrant real estate market, forecasts \$1.67 billion in revenue from its transfer tax in 2002-2003. Approximately 14.8 percent of its receipts, or \$249 million, will be dedicated to state and local housing trust funds.

Equitable development advocates embrace RETTs because they mitigate the very activities that can lead to displacement-high-end real estate sales with rapid turnover.

Why Use It?

Real Estate Transfer Taxes can:

Increase Funding for Equitable Development.

Affordable housing and other equitable development programs are difficult to fund. RETTs, however, can be easily designed to produce a *dedicated* source of funding for these programs. RETTs provide local matching funds for federal grants and leverage private funding. If a housing trust fund gets revenue from a RETT, for example, it can rely on a (fairly) predictable stream of income without being dependant on annual budget processes.

Capture Investment Entering the Neighborhood.

As new businesses, homeowners, and landlords move into gentrifying neighborhood, RETTs can capture a portion of that investment and redirect it to programs that preserve what made the neighborhood attractive in the first place, while allowing long-time residents to benefit from reinvestment along with newcomers.

Discourage Speculation.

Aggressive speculation can throw an entire housing market out of balance. Reducing speculation stabilizes rents; home and apartment prices; and property taxes. The jurisdiction as a whole benefits through maintaining diversity and affordability of its housing stock.

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How To Use It?

"Many places call their transfer taxes "documentary stamp taxes" because the tax receipt is a stamp affixed to the documents before they are recorded.

Real estate transfer taxes can be enacted at the state, county, and municipal level. They become part of closing costs, usually adding a nominal amount to the associated fees. They are sometimes called "documentary stamp taxes," because they require a "stamped" receipt of payment before the title transfer documents are recorded at a county clerk's office.

Many states and localities already have a RETT on the books, but neighborhood advocates may want to increase it and/or redirect its use.

For new and amended RETT ordinances alike, there are a number of variables to consider:

What's covered? Residential properties (single family and multifamily, owner-occupied and rental) are usually covered by RETTs. Vacant land, industrial, commercial, and retail properties may be included depending on the circumstances. Jurisdictional decisions are based on market trends. Sometimes, RETTs are used to encourage investment in certain properties, such as industrial developments that will create jobs.

What is the tax rate? A RETT is usually applied as a percent of the sales price or as a set dollar amount per \$1,000 of value of a sold property. New Jersey, for example, charges \$1.75 per \$500 of the first \$150,000 of purchase price and an additional \$.75 per \$500 of any amount over \$150,000. The level is usually a balance between raising sufficient funds to meet the goal for the RETT and the political feasibility of such taxes.

Exemptions. In order to avoid burdening low-income homebuyers, a RETT is often applied only to the amount of the purchase price above a certain threshold, such as \$75,000.

Use of the Revenues. RETTs usually go directly into general revenue. But some or all of the money can also be targeted for specific uses. Affordable housing, schools, and open space preservation are some of the most common uses. New Jersey, for example, shares its revenue between the county where the sale took place and the state, with the bulk of the state's portion going to environmental protection and neighborhood preservation.

RETTs are a very common way to fund housing trust funds. According to the Fannie Mae Foundation, 12 of the 37 state-level housing trust funds are funded by RETTs, and most of the large funds (over \$10 million in revenues) get some of their income from RETTs.

Who pays the tax? A RETT may be the responsibility of the buyer, the seller, or both jointly. In practice, the division of the tax is often negotiated at closing.

In Ontario, Canada, first-time home buyers may apply for a land transfer tax refund up to \$2000 if the home purchased is a newly constructed home.

Anti-Speculation Measures. RETTs are usually set low enough that they do not affect the market in any noticeable way. But sometimes RETTs are designed to dampen speculation, purchases followed by rapid resale and steep price increases, with little or no actual improvement made to the property. Property "flipping" schemes also can employ fraudulent assessments of real estate value or inaccurate claims about the level of renovation. RETTs can reduce the motivation for speculation in a few ways:

- Tax rates can be based on the amount of time the property is held, with very high rates-high enough to affect profit-for properties held for six months or less. Rates then decrease until they reach a more usual, unobtrusive level after 3-6 years. Alternatively, a portion of the profit may be exempt from the tax, but only if a property has been held for a minimum period of time. These practices discourage speculation without penalizing long-term homeowners.
- Taxes can also be based on the amount or increased price, and/or the percent of profit from sales. Thus, windfall profits with little investment would be taxed at a higher rate. The costs of improvements made to a property would be subtracted from the calculations of profit or sales price increase.

In either case, to make sure only speculators pay higher tax rates, exemptions can be made for people over 65, new construction, emergencies, or homeowners in situations such as job loss or transfer, adverse change in income, recent divorce, new children, marriage, or death of a family member.

Anti-speculation measures also make property-flipping scams less appealing and more difficult to carry out, since the enforcement agency will have records of sales that involve rapid ownership turnaround and large price hikes.

Getting a RETT Passed

Until 1966, there was a federal transfer tax on real property. When it expires, many states, like Maine, adopted one in its place.

Secure State Permission. Many states require municipalities to get state approval to pass a new tax. To approve a local RETT in one of these states, a jurisdiction must first make its case to the state, to get a "local option," and then pass it locally. This can require a lot of work (and swift timing). In 1996, residents of Cape Cod, Massachusetts petitioned the state for permission to establish a RETT for conservation purposes. The state legislature approved a voter referendum, but by the time the RETT ordinance came to a vote, the opposition was well organized and the ordinance lost.

Regarding states that require approval for a RETT, Jaimie Ross, affordable housing director of 1000 Friends of Florida, suggests that its most feasible for revenues to be shared between the state agencies and local governments. Ms. Ross brought together a coalition that created a bill to increase the state RETT in Florida and direct some of it to affordable housing (see Tool in Action). Ross says that once state-level players have something to gain from the proposal they will throw their weight behind it, giving it a much better chance of passage.

Build a Coalition. As with any local ordinance, there are many interest groups that might be supportive if they are reassured that the RETT will not harm their interests, or better yet, that it will benefit them in some way. Exemptions that protect long-time or low-income homeowners or agreements to use some of the revenue to fund homeownership (creating business for realtors) may be crucial to winning allies.

To build a coalition like this, it is important to solicit input from all relevant stakeholders before the details of the ordinance are finalized. "Find out what everyone's bottom line is, compromise to meet their needs, and then don't break the integrity of that compromise," says Ross.

Stay Mobilized. RETTs, and the programs they fund, can come under attack in times of economic stress. Keeping the original coalition together, and keeping track of the good things the money has funded, will be essential to maintaining the RETT as a dedicated source of funding for equitable development.

Key Players

- *Affordable housing advocates and their constituents.* A coalition to pass, increase, or redirect a real estate transfer tax will often start with lower income people, housing advocates, and others concerned about affordable housing and displacement. Employers concerned about the dispersion and displacement of some of their workforce, and other less usual affordable housing advocates should be included.
- *Real estate industry.* Realtors and homebuilders will be involved in any RETT proposal. The only question is whether their involvement will be as bitter opponents or allies. To win them over, make sure that RETT funded programs have some clear benefit for the industry's members.
- *Property owners.* Property owners, especially low- or middle-income homeowners, are going to be concerned about how the tax will affect them. This is especially true if punitive anti-speculation measures are being considered. Education about the benefits the tax, along with considering carefully focused exemptions, can bring them on board.
- *State and local governments.* Local governments are likely to be supportive of a new source of revenue as long as it will not be too politically costly. State governments' attitude can range from hostile to ambivalent to supportive, depending on the strength of the coalition, the political *climate*, on taxation in general, and whether the proposal is a statewide measure that will bring funding to state agencies as well.
- *Tax specialists* are useful in advising on the structure of the tax and the implications of different options in both achieving the goal of reducing displacement and in putting together an effective coalition.

Challenges

Political Opposition

"REALTORS need to be concerned, because these kinds of taxes are viewed as easy," says Glenn Dorfman, executive officer of the Minnesota Association of REALTORS. "They don't hit everybody, just users, and in the case of real estate, infrequent users."

REALTOR Magazine Online, November 1, 2002

The real estate industry tends to automatically oppose taxes affecting their industry. In fact, the website of the National Association of Realtors has an entire section devoted to RETTs, which includes a long list of links to news stories of realtors opposing and defeating RETT measures. They typically claim RETTs will both make housing unaffordable and cause housing markets to stagnate. Foes like this will rally property owners of all sorts who are afraid of losing value and local officials who are afraid of discouraging investment.

There are two responses to this. First, the alarmist statements about harming the market have never been proven. Jaimie Ross, who was a real estate attorney before joining 1000 Friends of Florida, calls the assertion of harm "unadulterated ridiculousness," adding "there is not a real estate transaction anywhere-residential or commercial, low price or high-that has not happened because of the documentary stamp tax [Florida's RETT]," she says. "I can say that unequivocally. It is never part of the decision to buy and sell. The only issue is how are [buyer and seller] going to split it."

Winning realtors over necessitates showing them how they will benefit. Using at least some of the money earned for homeownership programs, for example, directly increases their business. In Florida, the realtors' lobbyist recognized the potential of more homebuyers early on, and has been a firm supporter.

Legislative Hurdles

In some states, localities must jump through many hoops to pass new local taxes. Some states prohibit local governments from instituting new taxes without state approval, or without a yes vote from an extra-majority of voters (e.g. two-thirds approval). The legality of the tax may also be challenged in some states as an income tax, especially if sellers pay and there are anti-speculation measures. If a RETT is classified as an income tax, it might require voter approval.

Administration of Anti-Speculation Measures

When a tax is graduated based on length of time of holding and/or profit received, the administration becomes much more complicated. The agency administering the tax needs to track the dates and prices when properties change hands, assess the value of improvements, and handle exemptions and appeals. This will cost more money and time, and generally makes these sort of measures unappealing to small jurisdictions.

Making the formula for calculating the tax rate as simple as possible, and creating a standardized form used in all closings (to determine which tax rate applies) can make the record-keeping somewhat simpler.

Success Factors

Ingredients for Success

Ask these questions about your program: What is the target population? What are acceptable activities? How can it benefit members of your coalition? What accountability measures are there?

Be specific about how the money will be used. Jaimie Ross, of 1000 Friends of Florida, says the biggest mistake she's seen in campaigns for RETTs is that "all they're trying to do is get money and give it out to local governments." Communications should explain how the money will be used, and how programs will be held accountable. Such measures give potential allies something to rally around. It makes a RETT proposal seem less like another tax and more like a way to fund something specific and desirable.

Get some real estate professionals on your side. In 1986, Block Island, Rhode Island, won permission from its legislature to set up a land trust and fund it with a real estate transfer tax. That same year, several other Rhode Island municipalities lost similar measures. The difference, according to a January 12, 2002 article in the *Block Island Times*, is that local real estate interests supported Block Island's proposal.

Illinois and Cook County have RETTs that are charged to the seller, while Chicago's is charged to the buyer.

Maintain the integrity of compromises. In order to pass the Sadowski Act, a 1992 Florida law which increased the state RETT and directed a portion of it to affordable housing, low-income advocates had to lower what they considered an acceptable percentage of funds devoted to very low-income individuals. In turn, the realtors lowered their goal for percentage of funds directed to homeownership. "We'd rather have a smaller slice of the pie than a big slice of no pie," says Jaimie Ross, who brought the various parties together for their first meetings. Once the coalition reached their agreement, neither side independently tried to have the numbers adjusted in their favor. Ross says this consistency kept the coalition together even after the legislation was passed.

Create Strong Accountability Standards. When devoting RETT revenue to a particular use, create detailed guidelines as to how the money will be used and how expenditures will be documented and reported.

Financing

RETTs can be easily used for community benefits, and they are not very difficult to administer. And RETTs can raise significant sums. In Nassau County, New York, a RETT of 1% on real estate transfers over \$500 was instituted in the face of a budget deficit, with an expectation of \$50 to \$60 million annually for the county from roughly \$5 to \$6 billion in sales. In 2000-2001, the state of Michigan collected \$262,682,000 from its RETT, which it directed to the School Aid Fund.

The level of revenue that a RETT creates depends primarily on:

- the rate charged;
- the types of properties covered; and
- the level of real estate market activity.

The amount generated for equitable development will also depend on how the revenue is allocated, and whether it is split among several recipients.

As a dedicated source of revenue, the main problem with RETTS is their fluctuation within the housing market.

Policy

Working with states

There are two approaches to working with states that have policies forbidding local municipalities to pass new taxes. The first is to petition the state for permission, sometimes called a "local tax option bill." The second is to mount a statewide campaign to create RETTs that are shared among localities. Going statewide involves a large number of interests and requires a great deal of coordination. Statewide efforts may not make sense if opposition is not expected. However, state level campaigns have the advantage of bringing in many allies, such as housing finance agencies, and can have a redistributive effect by collecting the tax from all areas of the state, including areas with more rapid growth.

Tie RETTs to other tools

RETTs are a perfect complement to a variety of [affordable housing tools](#), especially [housing trust funds](#). Assigning some or all of the revenue from a RETT to a housing trust fund both ensures a dedicated source of funding for housing and makes the tax easier to pass in the first place, because the tax clearly addresses the broadly understood need for more housing. RETTs can also be tied to other housing programs, depending on the needs of a locality.

Share

Other groups, especially conservation and education proponents, are also looking to RETTs for funding. Forming coalitions and crafting policies that allocate revenues to other programs, can be an effective strategy in uncertain climates.

Case Studies

It's All in the Details: Florida's Dedicated Revenue Source for Affordable Housing

It came about because of ignorance. At least that's what Jaimie Ross, affordable housing director at 1000 Friends of Florida claims. When she arrived in Tallahassee in Summer 1991, Ross knew little about the politics and animosities surrounding funding for affordable housing. But she quickly found out all was not well.

Ross's first goal on the job was encouraging local governments to implement their comprehensive plans and meet their affordable housing goals. But she was getting nowhere because it was lack of funds-rather than lack of will-that was holding the localities back. So Ross began to look into the question of funding, and she found two initiatives afoot.

At approximately \$15/person, Florida currently has the largest dedicated revenue source for housing in the country.

The city of Tampa had for years been trying to win a "local option" bill that would give localities the right to pass their own real estate transfer taxes to fund affordable housing. Meanwhile, a different affordable housing funding bill had emerged from several housing industry groups who were participating in an ad hoc working group on affordable housing convened by Governor Lawton Childs . Ross talked to the sponsors of each bill, and each felt the other one didn't stand a chance. "I said these people need to come together," she remembers.

Building a Coalition

Ross started by calling the Tampa city lobbyist, Cathy Bentancourt, who put her in touch with other affordable housing advocates. "Soon there were so many people coming to my meetings we couldn't hold them in our office," recalls Ross. "So I asked the home builders if we could have it at their office." The home builders said yes, but when Ross told Bentancourt about the new location, Bentancourt told her "Hell no!" The home builders, along with the Realtors, had taken the lead in defeating the Tampa local option bill over and over, and Bentancourt refused to show up if the meetings were at their offices.

Ross had uncovered a deep mistrust in the housing world. "If I'd had that knowledge beforehand, I would've thought it couldn't be done," she says. But having come this far, and seeing it as the only option to make some lasting change, she persevered. She found a meeting room on neutral ground - at the legislature - invited everyone, and sat back. "I was scared out of my mind," she says. "These were powerful people. No one knew who I was, but they knew each other. And they started hammering out a compromise bill."

The coalition included the Florida Home Builders Association, Florida Association of Realtors, Florida Association of Counties, Florida League of Cities, Florida Legal Services, Department of Community Affairs, Florida Housing Finance Corporation, Florida Impact, Florida Catholic Conference, and the Florida Housing Coalition. Their bill became the William E. Sadowski Act of 1992. It raised the state's real estate transfer tax (called the documentary stamp tax) by a dime, from 60 to 70 cents per \$100. That increase was directed 30 percent to the state housing finance corporation, and 70 percent to be divided among the housing trust funds of 67 counties and 48 cities (the ones eligible for federal Community Development Block Grants). In 1995 another 10 cents per \$100 of the revenue stream would be re-directed to the housing programs.

Building a Compromise

The Sadowski Act Coalition made the State Housing Initiative Program so detailed there was hardly any need for rule making to implement it.

Ross says the bill was successful because it spelled out a very specific program - the State Housing Initiative Program - that explained exactly how the money would be used. Each member of the coalition got some benefits and made some compromises in crafting the program's guidelines. For example, 65 percent of the money must go to homeownership programs - this was a compromise between the Realtors' goal of 100 percent and the low-income advocates' goal of no more than 50 percent. The home builders got a guarantee that 75 percent of the money would go to construction-related activities, and that participating local governments would expedite the permitting process for affordable housing. The low-income advocates got a requirement that at least 30 percent of the money would go to housing for very low-income people (under 50 percent of median income) and another 30 percent to low-income (under 80 percent of median), with the remaining available for projects for people up through moderate-income (under 120 percent of median).

No exemptions to the tax at all were included - Ross says the prospect of negotiating them was far too complicated, and would've become a real "sticky wicket." So the coalition steered clear.

The Catalyst Program is delivered through the Florida HOusing Coalition. It provides on site technical assistance, a hotline, and workshops for local governments and nonprofits on every part of affordable housing.

Within these parameters, the local governments have flexibility about how to use the money. It has been used for rehab work, foreclosure prevention, new construction, down payment assistance, and more. A strong accountability component is built in - the money must be "expended" within two years, and "expended" means a qualified person has actually moved in. The Sadowski Act also sets aside \$350,000/year for the Catalyst Program, which provides training and technical assistance on all aspects of affordable housing to local governments - many of which had never received housing funding before the act was passed.

It was these details and compromises that made the bill politically feasible," says Ross. The state housing finance corporation went to bat for the Act, since it stood to get 30 percent of the revenue. And the housing industry lobbyists saw that in the end, the increased housing funding would be good for business. "Have your Realtor call my Realtor," Ross sometimes jokingly tells colleagues in other states who are facing Realtor resistance.

Hanging on to Success

Although the Sadowski Act has made Florida the envy of affordable housing advocates across the country for the past 10 years, in 2003 Florida housing advocates are facing a tough challenge. Governor Jeb Bush has proposed redirecting the transfer tax money and funding housing on an annual appropriations basis. This would seriously weaken the housing programs, and require a huge amount of energy to yearly lobby for funding.

But the good news, according to Ross, is that the Sadowski Act Coalition has continued to meet every year since the act was passed to monitor its successes and advocate for continued affordable housing funding. Since the coalition is still around, Ross thinks they can put up a good fight in the legislature. The years of accountability reports will also provide them with good data to make their case. After all, the reason the coalition is still together, says Ross, is because the housing program works.

Resources

1000 Friends of Florida, [Affordable Housing Program](#)

["Field Guide to Real Estate Transfer Taxes"](#), National Association of Realtors

["Real Estate Transfer Taxes"](#), from *Financing Local Parks*, Trust for Public Land.

"The New Jersey Realty Transfer Tax." American Lawyer Newspapers Group, Inc., *New Jersey Law Journal* . June 21, 1999.

["Real estate agents eye house rental tax"](#), Read Kingsbury, *Block Island Times*, January 12, 2002.

["Homeowners and the New Land Tax"](#). Michael Larkin, *Hicksville Illustrated News*. August 20, 1999.