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Directive 03-1: Limitation Period for Assessing the Deeds Excise

Issue: What is the limitation period for assessing the deeds excise?

Directives:

1. If a taxpayer purchases deeds excise stamps for an amount that is less than the full amount of the deeds excise required by statute, the Commissioner may make an assessment at any time within three years from the date the deeds excise was paid or was required to be paid whichever is later.
2. If the taxpayer purchases no stamps to pay the deeds excise with respect to a taxable transaction, the Commissioner may assess the tax at any time.

Discussion:

Massachusetts General Laws chapter 64D, section 1, provides that there shall be levied, collected and paid an excise upon every "deed, instrument, or writing, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers . . . when the consideration of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, exceeds one hundred dollars". The excise applies to any instrument or writing transferring an interest in real estate. The excise is not limited to deeds, instruments, or writings that will be recorded. DD 95-5.

Massachusetts General Laws chapter 64D, section 2 requires that the tax imposed be paid by the person who makes or signs the deed, instrument or writing, or for whose benefit the same is made or signed. The payment of the tax must be denoted by adhesive stamps affixed to the deed, instrument or writing. *Id.* The deeds excise is payable at the Registry of Deeds in the jurisdiction in which the property is located, by the affixation of the appropriate adhesive stamp on the deed, instrument or writing, whether or not such document is recorded. G.L. c. 64D, § 3.

The Commissioner of Revenue is charged with administering and enforcing the deeds excise. G.L. c. 64D, § 6. The deeds excise is subject to the tax administration provisions of G.L. c. 62C. DD 95-4; G.L. c. 62C, § 2. Under G.L. c. 62C, § 26, if the Commissioner determines that the full amount of any tax has not been assessed or deemed to be assessed, the tax may be assessed with interest, first giving notice of intention to the person being assessed. Under G.L. c. 62C, § 26(d), in the case of failure to file, the Commissioner may make an assessment at any time, without giving notice of his intention to assess, determining the tax due according to his best information and belief.

The deeds excise is self-assessed and paid by affixing an adhesive stamp in the proper amount to the deed, instrument or writing. G.L. c. 64D, § 2. This is analogous to regular self-assessments made through the filing of returns under G.L. c. 62C, § 26(a). Since filing a return showing a tax amount due gives the commissioner three years to assess the additional tax, purchasing a deeds excise stamp for less than the full amount of the deeds excise due gives the Commissioner three years to assess the additional amount due. Similarly, since failure to file a required return leaves the statute of limitations upon assessments open, G.L. c. 62C, § 26(d), it follows that failure to buy a deeds excise stamp does the same. As such, subject to the Department's policy articulated in TIR 01-08, the Commissioner may assess the tax at any time.^[1]

Penalties for late payment or failure to pay following an assessment may also be assessed. DD 95-

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4; See G.L. c. 62C, §§ 33(b) and 33(c). Any person aggrieved by an assessment of the deeds excise may file an application for abatement within three years from the date of the deed, instrument of writing, two years from the date the tax was assessed or deemed to be assessed, or one year from the date of payment, whichever is later. DD 95-4; See G.L. c. 62C, § 37.

In connection with any conveyance or transfer subject to the deeds excise, the Commissioner may, at any time, investigate and ascertain whether the proper excise was paid. G.L. c. 64D, § 6. He may examine any books, papers, or memoranda bearing upon the amount of the excise. *Id.* The parties responsible for the payment of the deeds excise have the burden of proving either that the deeds excise was paid in full, or if no payment was made, that the excise was not applicable to the instrument recorded.

/s/Alan LeBovidge

Alan LeBovidge

Commissioner of Revenue

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[1] Under TIR 01-08, when a taxpayer was previously required to file returns but is no longer so required, the Commissioner will assess the taxpayer for the final seven years (*i.e.*, eighty-four months) for which the taxpayer was required to file returns, provided that the Commissioner did not contact the taxpayer concerning such returns before the due date for its final return.