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[For Individuals and Families](#)
[For Businesses](#)
[For Local Officials](#)
[For Tax Professionals](#)

[Home](#) > [Businesses](#) > [Help & Resources](#) > [Legal Library](#) > [Directives](#) > [Directives - By Decade](#) > [\(1980-1989\) Directives](#) >

Directive 89-17: Statutory Merger

FACTS: Turtle Corp. is absorbed by Sharkco in a statutory merger. As part of the merger Turtle transfers its realty to Sharkco.

ISSUE: Is a transfer of a real property from one corporation to a new or continuing corporation as part of a statutory merger subject to the Massachusetts deeds excise?

DISCUSSION: Massachusetts imposes an excise upon the transfer of any deed, instrument or other writing whereby realty sold is conveyed to a purchaser. G.L. c. 64D, § 1. The excise is based upon the consideration given for the property and applies whenever the consideration, exclusive of any lien or encumbrance remaining on the property, is greater than \$100. The tax is paid by the person making or signing the deed and is evidenced by an affixed stamp. As of July 1, 1989, the tax is \$2.00 for each \$500, or fraction, of consideration plus an additional tax of 14% of the tax imposed, i.e., \$2.28/\$500, except in Barnstable County where the rate, including surtax, is \$2.85/\$500. The rates are currently scheduled to change on July 1, 1992.

However, a transfer of real property conveyed by one corporation to a new or continuing corporation as part of a statutory merger is not a transfer for a consideration. *Commissioner of Revenue v. SCA Disposal Services, Inc.*, 383 Mass. 734 (1981). Since no consideration is given for the property, no deeds excise is due regardless of the value of the real property conveyed.

DIRECTIVE: A transfer of real property from a corporation to a new or continuing one as part of a statutory merger is not subject to the Massachusetts deeds excise.

REFERENCE: G.L. c. 64D, § 1; *Commissioner of Revenue v. SCA Disposal Services, Inc.*, 383 Mass. 734 (1981).

/s/ Stephen W. Kidder
Stephen W. Kidder
Commissioner of Revenue

December 11, 1989

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89-17

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(9). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered. and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.

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