



# CITY OF WILMINGTON

## Realty Transfer Tax

### Internal Audit Review

July 19, 2018

#### City Auditor's Office

Terence J. Williams  
City Auditor  
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#### Highlights

##### *Why We Did This Audit*

The Internal Audit Department (IA) performed a scheduled audit of the Realty Transfer Tax Process. The audit was in accordance with the 2017 Internal Audit Plan.

##### *Methodology*

The objectives were met through discussions with City and New Castle County personnel, reviewing applicable City Code and policies and procedures related to the process, and the review and analysis of realty tax documentation.

##### *Audit Review Committee:*

Robert C. Johnson, Chair

Ciro Adams  
Marchelle Basnight  
Angelique Dennis  
Bud Freel  
Ronald Pinkett  
Tanya Washington

#### *Objective and Scope*

As part of our audit plan we conducted a Performance Audit of the City's Realty Transfer Tax Process. The timeframe of the audit was July 1, 2015 to March 31, 2017. Our objective was to determine that operating procedures and internal controls provide adequate assurance that the City of Wilmington (CoW) was collecting all Realty Transfer Taxes that were due. IA believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards ("GAGAS"). These standards require that IA plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives.

#### *Background*

When Delaware real estate is transferred it is subject to a 3% Realty Transfer Tax. The tax is 3% of the greater of the consideration received or the assessed value of the property. The tax is paid 1.5% to the State of Delaware and 1.5% to the applicable county. For some of the larger cities, the tax is paid to the City rather than the county. Such is the case with the City of Wilmington. Wilmington receives the 1.5% tax rather than New Castle County.

The CoW Realty Transfer Tax is governed by Article V of the City Code. Article V also defines reasons why a transaction may be 100% or 50% exempt from the transfer tax.

In general, a representative from the buyer's attorney's office will present the CoW cashier with the following: (a) two copies of Form 5402 State of Delaware Affidavit of Gain and Value; (b) a check payable to the CoW for the CoW Realty Transfer Tax; (c) property Deed; (d) CoW Affidavit of Exemption (if applicable); and (e) Section A First Time Home Buyer (if applicable). In the initial conversation with the Finance Department, the IA learned that the three primary documents associated with the Realty Transfer Tax are destroyed after thirty (30) days. The documents are not retained for a period of three years in accordance with the City's record retention policy for tax records.

As a result of the document destruction, the IAD adjusted the transactional testing to 100% of the real estate transfers in the last period of the audit period, March 2017. The IA also worked closely with the New Castle County Recorder of Deeds Office to secure all missing Form 5402's. The County also provided a listing of all CoW real estate transfers for the 21 month audit period as the City Finance Department could not easily produce the listing.

### **Key Statistics:**

Realty Transfer Tax Revenue	2015	2016	2017
Tax Collected	\$2.5M	\$2.2M	\$3.2M

### **What we found**

### **Key Findings**

Following are key issues that resulted in a process/area to be risk rated a three or four. See **Attachment A** for the detail of these and all comments identified during the review.

### **Risk Ranking:**

(See Attachment B for full rating definitions)

Process / Area	Process / Area Owner	1 Strong Controls	2 Controlled Effectively	3 Controlled - Improvement Required	4 Significant Improvement Required
Compliance	Patrick Carter Linda Hunter				√
Record Retention	Patrick Carter Linda Hunter				√
Review & Approval	Patrick Carter Linda Hunter			√	

### **Compliance**

1. No controls exist to verify whether compliance with the Realty Transfer Tax requirements was consistently being followed.
2. The Realty Transfer process lacks procedures for confirming the transfer process used to calculate the tax.
3. There is a lack of controls in the realty transfer process because there is no process in place for the City to verify whether the Buyer or Seller is meeting the requirements for tax exemption, due to the tax exempt status being granted on the "honor system".

### **Record Retention**

4. The realty transfer tax process was not in compliance with the CoW record retention policy.

### **Review and Approval**

5. Controls for the realty transfer process need strengthening because there was no review of the Realty Transfer Tax for mathematical accuracy.

## Management Responses to Audit Recommendations

### Summary of Management Responses

**Recommendation #1:** Management should ensure that each month, the Department obtains a listing of all real estate transfers that occurred in the City. The City should then ensure that all transfers have the associated payment and bank deposit or the related tax exemption documentation.

Agree

**Management response & action plan:** Management responses were not received at the time of audit publication but will be provided by management at a later date.

**Completion Date:** TBD

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**Recommendation #2** When processing tax payments, the Department should confirm that the transfer price upon which the tax is calculated is at least equal to the assessed value of the property per the New Castle County Parcel Search records. The City should establish ordinances or other procedures to validate the actual consideration received (e.g. deeds must be recorded at actual consideration not a de minimus value or require a settlement document signed by both parties to be attached to the form 5402 as verification of the sale price).

Agree

**Management response & action plan:** Management responses were not received at the time of audit publication but will be provided by management at a later date.

**Completion Date:** TBD

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**Recommendation #3:** Management should create a process whereby the parties submit an application to the City for tax exempt status and the City investigates the request before it issues a tax-exempt certificate.

Agree

**Management response & action plan:** Management responses were not received at the time of audit publication but will be provided by management at a later date.

**Completion Date:** TBD

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**Recommendation #4** Management should establish a Record Retention Policy specifically stating how the Realty Transfer Tax documents should be retained electronically and / or physically in accordance with the documented procedures.

Agree

**Management response & action plan:** Management responses were not received at the time of audit publication but will be provided by management at a later date.

**Completion Date:** TBD

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**Recommendation #5** At payment processing, the Department should review the Form 5402 tax calculation for mathematical accuracy and initial the form evidencing the review.

Agree

**Management response & action plan:** Management responses were not received at the time of audit publication but will be provided by management at a later date.

**Completion Date:** TBD

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***Audit Team***

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