

# NRS 375.090 (1): Exemption 1

## Prepared by Nevada Department of Taxation

The model affidavit is an interim guidance for County Recorders and Taxpayers regarding the exemption from the real property transfer tax claimed pursuant to NRS 375.090(1) as revised by Assembly Bill 448 adopted in the 82<sup>nd</sup> Legislative Session:

**NRS 375.090 (1):** The taxes imposed by NRS 375.020, 375.023 and 375.026 do not apply to **except as otherwise provided in this subsection**, a mere change in identity, form or place of organization, such as a transfer between a business entity and its parent, its subsidiary or an affiliated business entity if the affiliated business entity has identical common ownership. **The taxes imposed by NRS 375.020, 375.023 and 375.026 apply to a transfer described in this subsection if the business entity to which the real property is transferred was formed for the purpose of avoiding those taxes.**

The following guidelines apply:

1. **Plan of Reorganization.** The transfer of property must be pursuant to a plan or reorganization. The affidavit must indicate the reason or purpose for the reorganization as well as the type of change, such as change in identity (one LLC to another LLC), change in form (from an LLC to a corporation; from a general partnership to a limited partnership), or place (from a California corporation to a Nevada corporation). The affidavit must also indicate that the transfer, including subsequent transactions, does not constitute a sale of Nevada real property which otherwise would be taxable.
2. **Continuity of Interest.** The taxpayer must be able to show through documentation that the individual ownership of the transferring business entity is identical to the business entity receiving the transfer. Documents such as articles of incorporation, partnership agreements, operating agreement, or similar documents showing the organization of the business, including each owner and the percentage of ownership, must be available for examination by the County Recorder.
3. **Continuity of the Business Enterprise.** In addition, the Attorney General has opined that any reorganization qualifying for the exemption must also exhibit continuity of the business enterprise. (*See AGO 95-24*). This means that the acquiring corporation or business entity either continue the acquired corporation or business entity's historic business or uses a significant portion of the historic business assets in the surviving business. The affidavit must state what the prior and continuing use of the business assets are.
4. **Legitimate Business Purpose.** The Attorney General has also stated that the reorganization must take place for a bona fide reason and must be an "ordinary and necessary incident of the conduct of the enterprise and must provide for a continuation of the enterprise."
5. **Business Entity Formation Purpose.** If a business entity to which the real property is transferred was formed for the purpose of avoiding the Real Property Transfer Tax, such transfer is subject to the taxes in NRS 375.

**In addition to the documentation required for Item 2, Continuity of Interest, the County Recorder may ask for documentation to verify the continuity of the business enterprise, and the legitimate business purpose, such as the reorganization plan.**

# Real Property Transfer Tax Model Affidavit for Exemption 1

*List the complete name of the claimant and contact information, as applicable:*

Name of transferring business entity	Name of business entity receiving the transfer
Name of petitioner	Contact person, if different from petitioner
Street address	Mailing address, if different from street address
City, state, zip code	City, state, zip code
Daytime phone number, including area code	Daytime phone number, including area code
E-mail address	Fax number (optional)

I, the undersigned duly authorized representative of the business entities named herein, do hereby make the following declarations:

1. The transfer referred to on the attached Declaration of Value is eligible for exemption from the real property transfer tax pursuant to NRS 375.090(1) and is not otherwise a taxable under NRS 375.
2. The business entity to which the real property is transferred was **NOT** formed for the purpose of avoiding taxes in NRS 375.
3. The business entity to which property is transferred has identical common ownership with the transferring business entity.
4. The property transferred will continue to be used in the same manner as it was used by the transferring business entity.

The business use of the property prior to the transfer was: \_\_\_\_\_

The business use after the transfer will be: \_\_\_\_\_

5. The purpose of this transfer is pursuant to a plan of reorganization to recognize:

- |  |                          |
|--|--------------------------|
| Change in the identity of the business entity      | <input type="checkbox"/> |
| Change in the business entity form of organization | <input type="checkbox"/> |
| Change in the location of the business entity      | <input type="checkbox"/> |

Description of the change: \_\_\_\_\_

**Documentation supporting these statements is attached.**

Signature	Title	Date	Representing
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State of Nevada                    )  
  )        **ss.**  
County of                            )

Signed and sworn to (or affirmed) before me on \_\_\_\_\_ (date)

by \_\_\_\_\_ (name(s) of person(s) making statement).

Notary Stamp, if applicable: \_\_\_\_\_

Notary Public or Officer Administering Oath

\_\_\_\_\_  
Title of Officer Administering Oath