



June 7, 2007
Pennsylvania Realty Transfer Tax
No. RTT-07-004
Confirmatory/Correctional Deed

ISSUE:

Where ownership of two parcels of real estate has been held by former and current owners of a Pennsylvania general partnership and such ownership has been evidenced by recorded deeds for a period of approximately 30 years, can the owners change the record ownership of the real estate to that of the general partnership by filing a deed from the owners, as grantors, to the Pennsylvania general partnership, as grantee; and if so, will such deed be excluded from the imposition for Pennsylvania Realty Transfer Tax as a corrective deed?

CONCLUSION:

Despite the intent of parties involved, the former and current owners of the general partnership have been the actual owners of the two parcels of real estate. Therefore, any deed from the owners to the general partnership will result in the actual transfer of title to and ownership of the two parcels of real estate. Any such deed will not be considered a corrective deed and will be subject to Pennsylvania Realty Transfer tax.

FACTS:

In 1978, ("Corporation A") conveyed by deed a parcel of real estate ("Parcel #1") to ("Taxpayer A"), ("Taxpayer B") and ("Taxpayer C"), as tenants in common, in fee.

Taxpayers have stated that Pennsylvania Realty Transfer Tax was not paid on that conveyance based upon the realty transfer tax exclusion for a transfer by a corporation to its shareholders, in the same proportion as the shareholders' interests in the corporation. See 72 P.S. § 8102-C.3(13). For purposes of this letter, it is assumed that Taxpayers A, B and C were the sole and equal shareholders of Corporation A.

Also in 1978, ("Corporation B") conveyed by deed a second parcel of real estate ("Parcel #2") to Taxpayer A, B and C, as tenants in common, in fee. Again, Taxpayers have stated that Pennsylvania Realty Transfer Tax was not paid on that conveyance based upon the realty transfer tax exclusion for a transfer by a corporation to its shareholders, in the same proportion as the shareholders' interests in the corporation. See 72 P.S. § 8102-C.3(13). For purposes of this letter, it is assumed that Taxpayer A, B and C were the sole and equal shareholders of Corporation B.

In 1993, over 15 years after the 1978 transactions referenced above, Taxpayer A, B and C entered into a formal written Partnership Agreement and Addendum under the name ("Partnership") for the purpose of operating Parcel #1 and 2 (and other parcels). A fictitious name registration was filed with the Commonwealth of Pennsylvania in 1994, under the name of the Partnership.

In 1998, pursuant to an Agreement of Sale and Assignments of Partnership Interests, Taxpayer C sold and assigned his 1/3 partnership interest in the Partnership to Taxpayer A

and B so that each owned a 50% interest in the Partnership. Deeds for Parcel #1 and 2 were executed and delivered from Taxpayer A, B and C to Taxpayer A and B, as tenants in common.

In 1999, Taxpayer A assigned and transferred his 50% interest in the Partnership to himself and his spouse. Deeds for Parcel #1 and 2 were executed and recorded to effectuate a commensurate change in ownership of Parcel #1 and 2 with the change in the Partnership interest.

Also in 1999, Taxpayer A and his spouse, together, and Taxpayer B each assigned their 50% Partnership interest to ("FLP #1") and ("FLP #2"), respectively. On the same day, Taxpayer A and his spouse and Taxpayer B each separately executed a deed conveying their respective ownership interest in Parcel #1 and 2 to FLP #1 and FLP #2 in order to effectuate a commensurate change in ownership of Parcel #1 and 2 with the change in the Partnership interest. Those two deeds were not recorded.

Taxpayers assert that Parcel #1 and 2 have continuously been treated as Partnership property since 1978, and have been reported as such on Federal income tax returns.

Taxpayers now desire to have ownership of Parcel # 1 and 2 in the name of the Partnership. Therefore, Taxpayers propose to execute a deed from Taxpayer A and his spouse, Taxpayer B, FLP #1 and FLP #2, as grantors, to the Partnership, as grantee. Taxpayers suggest that the proposed deed is a non-taxable corrective deed.

DISCUSSION:

Article XI-C of the Tax Reform Code provides that documents that effectuate or evidence the transfer of title to real estate are subject to tax absent a statutory exclusion. 72 P.S. § 8102-C. Documents that effectuate or evidence the transfer of title to real estate between business entities (corporations and associations) and their owners are specifically subject to tax under the Code. 72 P.S. § 8102-C.4.

A document that is executed for no or nominal consideration and that merely corrects an error in a previously executed document without extending or limiting existing ownership to real estate is excluded from tax. 72 P.S. § 8102-C.3(4). The Department's regulation further explains this statutory exclusion as follows:

§ 91.151. Correctional deed.

A deed made without consideration for the sole purpose of correcting an error in the description of the parties or of the premises conveyed is not taxable. This exclusion only applies if:

(1) The property interest in the correctional deed is identical to the property intended to pass with the original deed.

(2) The parties treated the property interest described in the correctional deed as that of the grantee from the time of the original transaction.

(3) The parties have not treated the property interest described in the original deed as the property of the grantee from the time of the original transaction.

61 Pa. Code § 91.151.

When the above criteria are satisfactorily demonstrated to the Department, the Department historically has allowed taxpayers to file non-taxable corrective deeds in situations where a business entity has entered into an agreement of sale and purchased real estate, but through a scrivener error, the deed of conveyance accidentally and erroneously shows the business entity owners as the grantees rather than the business entity itself. However, in order for the corrective deed exclusion to be applicable, there must be evidence to demonstrate an actual scrivener error rather than an error of judgment. If the evidence indicates that title to the real estate was purposefully conveyed to the owners of the business entity rather than to the business entity itself, the exclusion is not applicable. The fact that the parties later discover or determine that it is not advantageous to have title in the name of the owners is irrelevant.

The issue of real estate ownership can be particularly problematic in partnership situations.

Although real estate may be titled in the name of a partnership, Pennsylvania's Partnership Code, 15 Pa.C.S. §§ 8101, et seq., permits an individual to contribute an interest in real estate to the use of a partnership in which he is a partner while still remaining the legal owner and titleholder to the real estate interest.^[1] Consequently, real estate can become "partnership property" for purposes of the Partnership Code even though actual ownership remains with the partners in their individual capacities. For realty transfer tax purposes, the actual ownership of real estate is the dispositive factor.

In this case, Corporation A and B conveyed Parcel #1 and 2 to Taxpayer A, B and C in their individual capacities as owners of the Corporations. This is evidenced by the fact that the parties claimed a Realty Transfer Tax exclusion for transfers from a business entity to its owners. 72 P.S. § 8102-C.3(13). There was no evidence to suggest that the Partnership was an owner of either Corporation. Therefore, in 1978, actual ownership to Parcel #1 and 2 passed to Taxpayer A, B and C in their individual capacities. Despite the numerous transactions that have occurred since 1978, there is no evidence to suggest that the Partnership ever obtained actual ownership of the real estate. The facts as supplied by Taxpayers indicate that there has been several deeds effectuating a change in the individual owners of the real estate, but there has not been a conveyance of title to the Partnership. Consequently, any deed from the former and current owners of the real estate to the Partnership will not be considered a corrective deed and will be a taxable document.

^[1] See 15 Pa.C.S. § 8313(c) that provides real estate may be held in the name of a partnership. Compare 15 Pa.C.S. § 8322 that provides partnership real estate may be titled in the name of the individual partners.