



September 24, 2007
Pennsylvania Realty Transfer Tax
No. RTT-07-008
Corporate Reorganization
Corporate Dissolution and Liquidation

ISSUE:

Is a document that conveys title to real estate from a lower-tiered business entity in a business organization structure to an upper-tier business entity in the organization's structure that is several tiers removed from the lower-tiered business entity pursuant to a reorganization of the business structure subject to Pennsylvania Realty Transfer Tax?

CONCLUSION:

On its face, the document effectuates a conveyance of title to real estate from one business entity to another and is taxable on the full value of the real estate. However, if the document, in substance, represents a series of transactions that have been reduced to one document for the convenience of the parties, then the Department will consider the single document to be the equivalent of the series of transactions and impose tax on the document as if each transaction had been executed by a document.

FACTS:

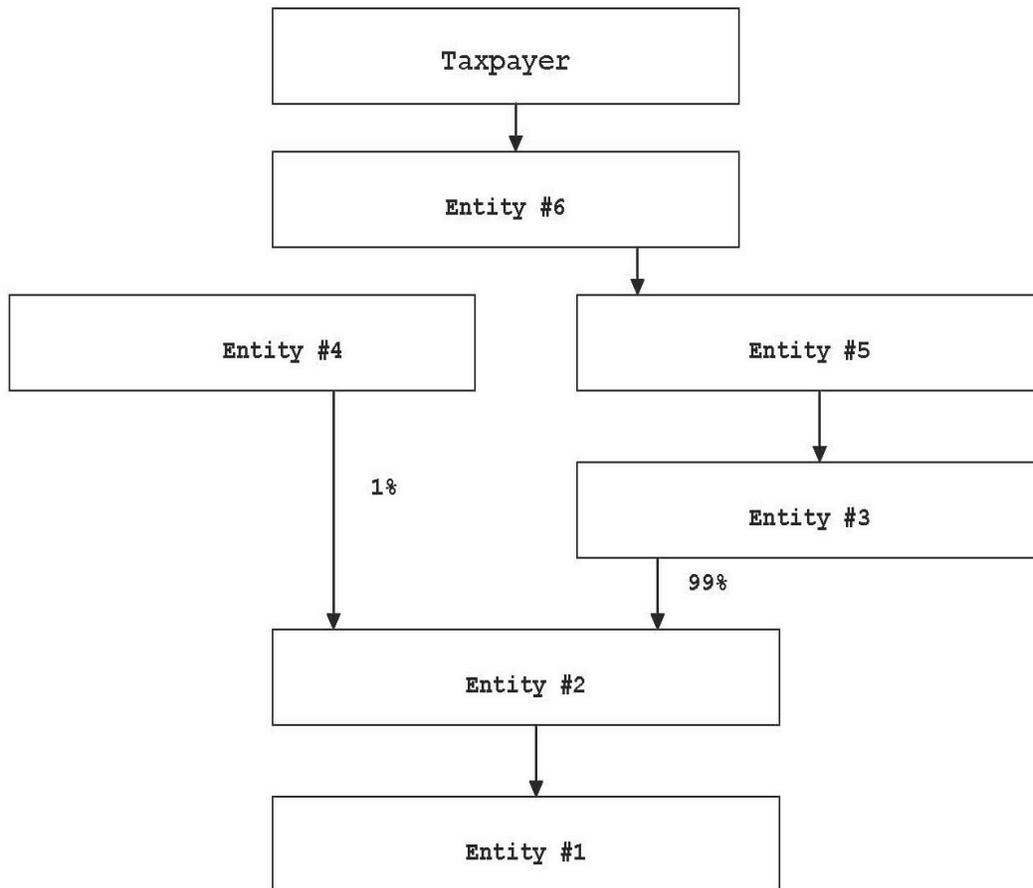
Taxpayer is a business corporation and the top-tiered, parent entity in a business organization structure. Taxpayer is considering a business reorganization that will affect title to a distribution center located in Pennsylvania (Real Estate).

Title to the Real Estate is currently held by Entity #1. Entity #1 is a business trust, and therefore, considered a corporation for Pennsylvania Realty Transfer Tax purposes. Entity #1 is a lower-tiered entity in Taxpayer's business structure.

At the end of the proposed reorganization, title will be held by Entity #6. Entity #6 is an upper-tiered business entity in Taxpayer's business structure and several tiers removed from Entity #1.

The following is a description and diagram of the relevant business entities in Taxpayer's business organization structure:

1. Entity #2 is the sole owner of Entity #1. Entity #2 is owned by two entities: Entity #3, owning a 99% interest, and Entity #4, owning a 1% interest.
2. The sole member of Entity #3 is Entity #5.
3. The sole shareholder of Entity #5 is Entity #6.
4. Taxpayer is the sole owner of Entity #6.



Taxpayer alleges that the above ownership structure has been in existence for more than two years.

The business reorganization would be accomplished as follows:

1. Entity #1 will be liquidated with its assets being conveyed to Entity #2.
2. Entity #2 will be liquidated with 100% of its assets being conveyed to Entity #3.
3. Entity #3 will be liquidated with its assets being conveyed to Entity #5.
4. Entity #5 will be liquidated and its assets conveyed to Entity #6.

Instead of executing a document to convey the Real Estate from each liquidating entity to its respective owner, Taxpayer proposes to execute one deed conveying the Real Estate from Entity #1 to Entity #6 ("Document").

DISCUSSION:

On its face, the Document effectuates a conveyance of title to real estate from a lower-tiered business entity in a business organization structure to an upper-tiered business entity in the organization's structure that is several tiers removed from the lower-tiered entity.

The upper-tiered business entity is not a direct owner or shareholder in the lower-tiered entity.

Documents that convey title to real estate, including conveyances between business entities, are subject to Pennsylvania Realty Transfer Tax absent an applicable exclusion. 72 P.S. § 8102-C. There is no exclusion for a document that conveys title to real estate from one business entity to another. There is an exclusion for a document that conveys title to real estate from a business entity to an owner (shareholder, partner, and member) of the business entity in proportion to the owner's pro rata ownership interest in the entity. This exclusion only applies to ownership interests held for two or more years. 72 P.S. § 8102-C.3(13). That exclusion is not directly applicable to the Document in this case because the upper-tiered business entity is not a direct owner of the lower-tiered entity. It only has an interest in the lower-tiered entity through its ownership of intermediate-tier business entities in the organization structure.

Because there is no applicable exclusion for this transaction, the Document that effectuates the transaction is, on its face, subject to Pennsylvania Realty Transfer Tax on the full value of the real estate conveyed by the Document. That is, unless the true substance of the transaction is something other than a mere conveyance of title to real estate between the lower-tiered and upper-tiered business entities.

Based upon the Pennsylvania Supreme Court's decision in Baehr Bros. v. Com., 409 A.2d 326 (Pa. 1979), it is the policy of the Department to treat a single document as a series of documents if the single document actually represents a series of transactions/documents that have been reduced to one transaction/document for the mere convenience of the parties. The tax due on the single document will be the same as the sum of the tax that would be due had each transfer been effectuated by a document. The Department will only view the single document as a series of transactions/documents if:

- (1) Each transfer and document in the series could have been accomplished and executed individually under the laws of the Commonwealth or the United States.
- (2) Completing the series of transfers and documents would result in the same transfer accomplished by the single document.
- (3) The series of transfers and documents have not been reduced to one transfer and document in order to avoid a legal, contractual, economic or personal detriment associated with completing the series of transfers and documents.
- (4) The series of transfers and documents would have been completed without the benefit of this tax treatment.

Taxpayer has explained that the Document in this case represents several contemporaneous conveyances of the Real Estate from liquidating lower-tiered business entities to upper-tiered business entities in the business structure as part of a reorganization of the business structure. Further, Taxpayer has suggested that each conveyance would be excluded from tax if effectuated by a document except for the conveyance of the real estate from Entity #2 to Entity #3, which conveyance would only be subject to tax on one percent of the value of the real estate if it were effectuated by a document.

The Department agrees that if viewed as a series of conveyances and documents, the only document that would be subject to tax would be the document that effectuates the

conveyance of the Real Estate from Entity #2 to Entity #3, and that conveyance would only be subject to tax on one percent of the value of the real estate because Entity #3 owns a 99% interest in Entity #2. Therefore, the conveyance of the Real Estate from Entity #2 to Entity #3 is excluded to the extent of Entity #3's pro rata ownership interest in Entity #2. The remaining conveyances and documents would be excluded from tax as a conveyance of the Real Estate from a business entity to its owner according to its pro rata ownership interest.

72 P.S. § 8102-C.3(13).

Assuming that the Document in this case represents the series of documents and conveyances as alleged by Taxpayer and the above criteria are met to treat the single document as a series of documents and conveyances, then the Document will only be taxable to the extent of the series of documents and conveyances. Because the series of documents and conveyances would only result in tax on one percent of the value of the real estate for the conveyance of the Real Estate from Entity #2 to #3, the Document will only be subject to tax on one percent of the value of the Real Estate.