



March 19, 2010
Pennsylvania Realty Transfer Tax
No. RTT-10-002
Conversion of Cooperative Corporation to Condominium
Conveyance of Condominium Units to Shareholder/Proprietary Lessees

ISSUE

Are deeds for condominium units that Taxpayer will execute and deliver to its shareholder/proprietary lessees subject to Realty Transfer Tax?

CONCLUSION

The deeds are subject to tax. However, a deed for a unit that is conveyed to a shareholder/proprietary lessee who has owned his or her interest for two or more years is exempt from tax to the extent of his or her pro rata ownership interest in Taxpayer. A deed for a unit that is conveyed to a shareholder/proprietary lessee who has owned his or her interest for less than two years is fully taxable.

There is also the potential for the application of a tax credit for each deed as explained below.

FACTS

Taxpayer is a Pennsylvania domestic Corporation.

Taxpayer is the owner of Pennsylvania real estate . The real estate is an apartment complex that consists of 75 apartment units and common elements.

Taxpayer's primary purpose is to provide its shareholders apartments under proprietary leases with each shareholder/proprietary lessee (hereinafter "shareholder") of the Corporation being entitled, solely by reason of his or her stock ownership, to occupy an apartment for dwelling purposes pursuant to the proprietary lease.

Taxpayer issued 10,000 shares of stock, par value \$1 each. All shares are of the same class, are voting shares, have been allocated to the 75 apartment units on a uniform basis, and are issued and outstanding to the shareholder occupants of these units. Taxpayer provided a list of its shareholders that provides: each shareholder's name, stock certificate number, the number of shares owned by each shareholder and the date of acquisition. That list is not reproduced as part of this ruling. All of the shareholders, except two, have owned their stock for two or more years. Each shareholder owns a different number of shares of stock in the corporation.

Currently, Taxpayer is considering changing its corporate form from a cooperative corporation to a condominium. In order to accomplish this proposed conversion, it is anticipated that the following actions ("Plan of Conversion") will be taken:

1. Taxpayer records a declaration of condominium and condominium plats and plans with the County Recorder of Deeds thereby creating a condominium unit for each shareholder's apartment with the balance of Taxpayer's realty and permanently attached fixtures becoming the common elements in the condominium;
2. Taxpayer establishes a condominium association, which may be incorporated as a nonprofit corporation or an unincorporated association;



3. Taxpayer transfers all personal property relating to the operation of the apartment complex to the condominium association;
4. Taxpayer distributes each condominium unit together with the proportionate share of the common elements to each shareholder in the form of a Unit Deed, in exchange for each shareholder's shares of stock in the corporation. The existing proprietary leases effectively will be terminated because the Lessor and the Lessee have now become the same person; and
5. Taxpayer will then dissolve under Pennsylvania law after the satisfaction of all liabilities, if any, as it will have no assets and no shareholders.

DISCUSSION

This case involves the conveyance of title to real estate, specifically condominium units, from a corporation to its shareholders.

For Pennsylvania Realty Transfer Tax purposes, any document that effectuates or evidences the transfer of title to real estate is subject to tax. 72 P.S. § 8102-C.

Real estate includes both a condominium unit and a tenant-stockholder's interest in a cooperative housing corporation, trust or association under a proprietary lease or occupancy agreement. 72 P.S. § 8101-C (definition (2) and (3) of "real estate").

Corporations and associations are considered separate and distinct from their owners and transfers of title to real estate are fully subject to tax. 72 P.S. § 8102-C.4.

Consequently, the transfer of title to a condominium unit or an interest in a proprietary lease or occupancy agreement is taxable for Realty Transfer Tax purposes absent an applicable exemption or exclusion.

The Realty Transfer Tax law provides an exemption for certain documents that convey title to real estate from a corporation or association to its owners. 72 P.S. § 8102-C.3(13) (hereinafter "exemption (13)"). Exemption (13) provides that a document that effectuates the following transfer of title to real estate is not taxable:

(13) A transfer from a corporation or association of real estate held of record in the name of the corporation or association where the grantee owns stock of the corporation or an interest in the association in the same proportion as his interest in or ownership of the real estate being conveyed and where the stock of the corporation or the interest in the association has been held by the grantee for more than two years.

From the facts provided, Taxpayer is the record owner of the real estate that comprises the apartment complex. After Taxpayer converts from a cooperative corporation to a condominium by filing the declaration of condominium, Taxpayer will be the record owner of all of the condominium units.

Taxpayer intends to transfer each condominium unit to its respective shareholder. Taxpayer indicates that all of its shareholders, except two, have all held their stock in the corporation for two or more years. For those shareholders who have not owned their stock for two or more years, exemption (13) is not applicable because the shareholders have not held their interest in the corporation for the requisite time period. For those shareholders, who have held their interest for two or more years, the exemption is applicable, but only partially.

Exemption (13) is applied to each individual parcel of real estate conveyed by the corporation or association. For example, if a corporation or association, owned equally by three individuals each of



whom has owned its interest for two or more years, owns one parcel of real estate and conveys it to the three owners as equal tenants in common, the conveyance is exempt from tax because each owner received an interest in the real estate equal to his or her pro rata ownership interest in the corporation or association. Compare that to a situation in which the same corporation or association owns three parcels of real estate and conveys the entire interest in each parcel separately to the three owners such that each owner becomes the sole owner of a respective parcel of real estate. In that situation, exemption (13) is only partially applicable to each conveyance. Because each owner owned a one-third interest in the corporation or association, each conveyance is only one-third exempt from tax.

In this case, Taxpayer is going to convey each of its 75 condominium units to its respective shareholders. Under Pennsylvania's Uniform Condominium Act, "each unit together with its common element interest constitutes for all purposes a separate parcel of real estate." 68 Pa.C.S. § 3105(a). Because each unit is a separate parcel of real estate, exemption (13) must be applied to each parcel to each individual shareholder. Therefore, the conveyance of each unit to a shareholder who has owned his or her interest for two or more years is only exempt from tax to the extent of the shareholder's pro rata ownership in the corporation expressed as a fraction the numerator of which is the number of shares owned and the denominator is the total number of shares of stock (in this case, # of shares/10,000). So, for example, a conveyance of a unit to a shareholder who owns 130 shares of stock is exempt from tax to the extent of 130/10,000 of the value of the unit conveyed.

In addition to exemption (13), there is the potential for the application of a tax credit to the conveyance of each condominium unit. Under the Realty Transfer Tax law there is a tax credit for the conveyance of real estate that is subject to a long-term lease. The relevant statutory provision provides that "[w]here there is a transfer of real estate which is devised [sic] by the grantor, a credit for the amount of tax paid at the time of the devise [sic] shall be given the grantor toward the tax due upon the transfer." 72 P.S. § 8103-C. Department regulations regarding the credit provide the following:

§ 91.233. Transfers by grantor of rented real estate.

If there is a transfer of real estate which has been rented by the grantor to another, a credit for the amount of tax paid at the time of the rental shall be given to the grantor toward the tax due upon the transfer. To claim the credit a statement of value shall accompany the document. 61 Pa. Code § 91.233.

It is assumed that the change from a cooperative corporation to a condominium will not affect or terminate the existing proprietary leases. Therefore, the leases will continue to be encumbrances on the real estate. It is also assumed that each proprietary lease will become an encumbrance upon its respective condominium unit. In that event there is the potential for the application of the tax credit for the conveyance of each the unit to its respective shareholder. Taxpayer did not provide any information as to whether Realty Transfer Tax has been paid on any of the existing proprietary leases; therefore, this Office is unable to provide an opinion as to whether the credit is applicable to any particular conveyance.