



October 12, 2005
Pennsylvania Realty Transfer Tax
No. RTT-05-012
Conversion of LLC to LP

ISSUE

Is a document that confirms the conversion of a taxpayer from a limited liability company to a limited partnership subject to Pennsylvania Realty Transfer Tax?

CONCLUSION

Under the facts as presented by taxpayer and outlined below, a document that confirms the conversion of a taxpayer from a limited liability company to a limited partnership is not subject to Pennsylvania Realty Transfer Tax.

FACTS

Taxpayer is a non-Pennsylvania limited liability company that owns real estate located in Pennsylvania. Taxpayer's sole business is the ownership and development of the real estate.

X Realty Company, (hereinafter "X"), an out-of-state limited liability company, is the sole member and owner of taxpayer.

X plans to convert taxpayer's entity form from a limited liability company to a limited partnership. X will effectuate the conversion by establishing a shell, additional out-of-state limited partnership, in which it is a 99% limited partner and the 100% member and owner of a new limited liability company that will be the 1% general partner. X will then merge taxpayer into the limited partnership. The merger is authorized under both out-of-states' laws.

The limited partnership will be the survivor of the merger and will continue the business of the taxpayer.

DISCUSSION

Documents that effectuate or evidence the transfer of title to real estate between business entities (corporations, associations, business trusts, etc.) are subject to realty

transfer tax. However, in Exton Plaza Associates v. Commonwealth, 763 A.2d 521 (Pa. Cmwlth. 2000), the Commonwealth Court held that realty transfer tax could not be imposed upon a document that evidenced the transfer of real estate from a general partnership to a limited partnership as part of the "conversion" of the general partnership to the limited partnership where the property rights of the principals in the general partnership remained unchanged after the conversion.

Based upon the holding in Exton, it is the policy of the Department that documents made without consideration and solely for the purpose of confirming a change in the form or identity, or merger or consolidation, of a corporation or association are not subject to realty transfer tax under the following conditions:

- (1) if without the making of any document,
 - (i) the resultant entity is vested with all the property, real, personal and mixed, and franchises of, and the debts due, the original association or, in the case of a merger or consolidation, each party thereto;
 - (ii) the resultant entity is subject to all the obligations of the original association or, in the case of a merger or consolidation, each party thereto;
 - (iii) liens upon the property of the original association or, in the case of a merger or consolidation, each party thereto, are not impaired by the change in form; and
 - (iv) any claim existing or action or proceeding pending by or against the original association or, in the case of a merger or consolidation, each party thereto, may be prosecuted to judgment against the resultant entity;
- (2) if the original association or, in the case of a merger or consolidation, each party thereto, is not required to wind up its affairs or pay its liabilities and distribute its assets either because there is no break in the continuity of its existence or because its separate existence ceases with the reformation; and
- (3) considering all the ownership interests in the original association or, in the case of a merger or

consolidation, each party thereto, there is no change in proportionate ownership interests resulting from the change in form.

In order for the above exclusion to apply, however, the converting entity must possess record legal title to the real estate being transferred. If the members of the converting entity possess record legal title rather than the converting entity^[1], the deed will not confirm the transfer from the entity to itself upon conversion. Rather, it will evidence a transfer from the individual members to the new entity. Transfers from owners of an entity to the entity are fully subject to tax. 72 P.S. § 8102-C.4.

In this case, the facts meet the above requirements. Consequently, any document that evidences the transfer of the real estate from taxpayer to the limited partnership pursuant the merger is not subject to Pennsylvania Realty Transfer Tax as long as the document is made or given for no or nominal consideration.

^[1] This is most often the case in partnership situations. The Partnership Code, 15 Pa.C.S. §§ 8101 - 8998, allows real estate that has been contributed to a partnership to remain titled in the name of the individual partners. (See 15 Pa.C.S. § 8313 (c), which provides that real estate may be held in the name of a partnership. Compare 15 Pa.C.S. § 8322, which indicates that partnership real estate may be titled in the name of the individual partners.)