



August 17, 2007
Pennsylvania Realty Transfer Tax
No. RTT-07-006
Corrective Deed

ISSUE:

Is a deed that is executed merely to remove a hazardous waste acknowledgment in a prior deed as required by the Pennsylvania Hazardous Sites Cleanup Act and the Pennsylvania Solid Waste Management Act following the remediation and cleanup of the hazardous waste on the real estate subject to Pennsylvania Realty Transfer Tax?

CONCLUSION:

Such a deed merely removes a statutorily required deed acknowledgment and does not affect, evidence or confirm the existing title to the real estate. Therefore, the deed is a non-taxable corrective deed.

FACTS:

In 2004, "Business Entity A" conveyed certain real estate located in Pennsylvania to Taxpayer. The deed of conveyance included a notice required by Section 512(b) of the Pennsylvania Hazardous Sites Cleanup Act (35 P.S. § 6020.512 (b)), and Section 405 of the Pennsylvania Solid Waste Management Act (35 P.S. § 6018.405) acknowledging that certain hazardous substances or hazardous wastes had been disposed of on the real estate (hereinafter "acknowledgment").

Taxpayer subsequently participated in the remediation and cleanup of the hazardous wastes as described in the acknowledgment, which remediation the Department of Environmental Protection ("DEP") has approved as meeting residential statewide health soil standards.

Section 303 of the Land Recycling and Environmental Remediation Standards Act (Act of May 19, 1995, P.L. 4, No. 2) (35 P.S. § 6026.303) provides that an acknowledgment in a deed of hazardous waste disposed of on real estate may be removed from the deed following the remediation and cleanup of the hazardous waste on the real estate. In pertinent part, the statutory section provides (emphasis added):

(g) Deed notice.-Persons attaining and demonstrating compliance with the Statewide health standard considering residential exposure factors for a regulated substance shall not be subject to the deed acknowledgment requirements of the Act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act, or the Act of October 18, 1988 (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act. *An existing acknowledgment contained in a deed prior to demonstrating compliance with the residential Statewide health standard may be removed.* The deed acknowledgment requirements shall apply where nonresidential exposure factors were used to comply with the Statewide health standard.

Taxpayer would like to remove the acknowledgment contained in the deed it received from Business Entity A. To do so, Taxpayer would like to record a deed listing Taxpayer as both grantor and grantee. The deed would be similar to the deed that it received from Business Entity A except that it would not include the acknowledgment. For purposes of this ruling, it is assumed that this deed will be executed for no or nominal consideration.

Taxpayer requests a ruling that recording this deed will not trigger Pennsylvania Realty Transfer Tax.

DISCUSSION:

Documents that effectuate or evidence the conveyance of title to real estate are subject to Pennsylvania Realty Transfer Tax, see 72 P.S. § 8102-C, absent a statutory exclusion.

Article XI-C, Section 1101-C, of the Tax Reform Code of 1971 defines a "document and "title to real estate" as:

"Document." Any deed, instrument or writing which conveys, transfers, devises, vests, confirms or evidences any transfer or devise of title to real estate, but does not include wills, mortgages, deeds of trust or other instruments of like character given as security for a debt and deeds of release thereof to the debtor, land contracts whereby the legal title does not pass to the grantee until the total consideration specified in the contract has been paid or any cancellation thereof unless the consideration is payable over a period of time exceeding thirty years or instruments which solely grant, vest or confirm a public utility easement. "Document" shall also include a declaration of acquisition required to be presented for recording under section 1102-C.5 of this article.

"Title to real estate."

(1) Any interest in real estate which endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, including, without limitation, an estate in fee simple, life estate or perpetual leasehold; or

(2) any interest in real estate enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consists of a group of rights approximating those of an estate in fee simple, life estate or perpetual leasehold, including, without limitation, a leasehold interest or possessory interest under a lease or occupancy agreement for a term of thirty years or more or a leasehold interest or possessory interest in real estate in which the lessee has equity.

72 P.S. § 8101-C.

In this case, Taxpayer's proposed deed is to be executed to remove the acknowledgment from the prior deed in the manner prescribed by statute. The proposed deed only removes the acknowledgment and does not convey, transfer, devise, vest, confirm or evidence any

transfer or devise of Taxpayer's title to real estate. Therefore, the deed is not a "document" for Pennsylvania Realty Transfer Tax purposes and is not subject to Pennsylvania Realty Transfer Tax.