



April 17, 2009
Pennsylvania Realty Transfer Tax
No. RTT-09-002
Name Change
Partnership Ownership of Real Estate

ISSUE:

When the grantee clause in a deed of record recites both the name of a partnership and the individual partners, may the partners and partnership execute and file a new deed to remove the names of the partners without the new deed being subject to the imposition of Pennsylvania Realty Transfer Tax?

CONCLUSION:

The partners and partnership can execute and file a new deed to remove the names of the individual partners without the imposition of Realty Transfer Tax as explained more fully below.

FACTS:

Between 1993 and 1996, several deeds were executed and recorded for the conveyance of several tracts of real estate. The grantee clauses in the deeds of conveyance recite the grantee as follows Partner #1, Partner #2 and Partner #3, as co-tenants in partnership, trading and doing business as "the Partnership".

The primary use of the real estate is for automobile sales and service dealerships.

Partner #3 is now deceased, and his estate has succeeded to his interest in the Partnership. The record ownership of the real estate has not been changed to reflect his death.

At this time, the Partnership and Partner #1, Partner #2 and Partner #3's Estate, as co-tenants in partnership, wish to execute a deed to remove the individual partners' names from the deeds of record for the real estate. To accomplish this, the Partners intend to execute and file new deeds. The grantee clause of the new deeds will recite the Partnership as the grantee and owner of the real estate.

In addition, in 2003, several deeds were executed and recorded for the conveyance of several other tracts of real estate. The grantee clauses in the deeds of conveyance recite the grantee as follows: (1) Partner #1 and Partner #2, as co-tenants in partnership, trading as the Partnership, and (2) The Partnership consisting of Partner #1 and Partner #2, as co-tenants in partnership.

The primary use of those parcels of real estate is also automobile sales and service dealerships.

The Partnership and Partner #1 and Partner #2, as co-tenants in partnership, wish to execute a deed to remove the individual partners' names from the deeds of record for those parcels of real estate. To accomplish this, the Partners intend to execute and file new

deeds. The grantee clause of the new deeds will recite the Partnership as the grantee and owner of the real estate.

The ownership interests in the Partnership will not change and the Partnership will continue to operate the same business. The partners want to change the current deeds of record so that ownership interests in the Partnership can be transferred without having to file new deeds to change the individual partner names each time partnership interests are conveyed.

For purposes of this letter ruling, it is assumed that the deeds the Partners and the Partnership intend to execute will be executed for no or nominal consideration.

DISCUSSION:

Article XI-C of the Tax Reform Code provides that a document that effectuates or evidences the transfer of title to real estate is subject to Pennsylvania Realty Transfer Tax. 72 P.S. § 8102-C and 72 P.S. § 8101-C (definition of "document").

"Title to real estate" is defined as

(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 (definition of "title to real estate").

It is not uncommon for an owner of real estate to experience a name change. This can happen in numerous situations, such as: a person's name change following marriage or a corporation or other business entity amending its fictitious name filing with the Department of State. Regardless of the reason for the name change, if the person changing its name owns real estate, the person may want to change the record title to real estate to reflect the owner's new name. Such a deed does not convey title. Consequently, it is not a taxable document.

In this case the Partners and Partnership propose to remove the individual partners' names from the grantee clauses in the current deeds of record, leaving only the Partnership's name to remain on record. The question presented is whether the deeds effectuating this change are non-taxable deeds merely evidencing a name change or are taxable documents that effectuate a transfer of title to real estate. The answer to this question is contingent upon the current ownership of the real estate.

Usually, the ownership of real estate is clear from the description of the grantee in the deed of record. However, the issue of real estate ownership can be particularly problematic in partnership situations. Under Pennsylvania law, a partnership can own real estate in its own name. In the alternative, the partners can own it in their individual capacities and contribute the real estate to the partnership's use. In this way, the partners remain the legal titleholders and owners of the real estate interest.^[1]

For Pennsylvania Realty Transfer Tax purposes it is imperative to determine whether a partnership or its partners, as individuals, own real estate. Associations, such as partnerships, and their owners are separate and distinct for Pennsylvania Realty Transfer Tax purposes, and transfers between them are fully taxable. 72 P.S. § 8102-C.4. As a result, a deed which changes the ownership of real estate from partners to their partnership is taxable.

Historically, the Department has looked to the language in the operative document to determine ownership. The Department will deem partners, in their individual capacity, to be the owners of real estate if such individual ownership is clearly indicated in the grantee clause. This includes grantee clauses where the partners' individual names are used alone to designate ownership or if the individual partners are designated as owning the real estate as tenants in common or joint tenants. Thus, in a document where the grantee clause recites the owners of the real estate as "individual X, Y and Z" or "individual X, Y and Z, as tenants in common or as joint tenants," then the individuals own the real estate.

On the other hand, the Department will deem a partnership to own real estate if the grantee clause indicates that the partnership is the owner. This includes instances when the partnership, in its name alone, is listed as the grantee or when the partners are listed as the grantees in their capacity as partners. For example, if a document recites the grantee as follows the Department will deem the partnership to be the owner of the real estate: "Partner X, Y and Z trading as (t/a) XYZ Partnership," "Partner X, Y and Z doing business as (dba) Partnership XYZ," "Partner X, Y and Z in co-partnership," "Partner X, Y and Z, tenants in partnership," or the like.

Because the grantee clauses in the deeds of record at issue in this case make reference to the Partners' ownership of the real estate in their capacities as partners, the Department recognizes the Partnership to be the owner of the real estate. As a result, any deeds that the Partners and the Partnership may execute and file to remove the names of the Partners from the record title of the real estate will not change the ownership of title to the real estate. The Partnership will remain the owner. Consequently, such deeds are not taxable documents for Pennsylvania Realty Transfer Tax purposes.

[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.