



**January 14, 2010**  
**Pennsylvania Realty Transfer Tax**  
**No. RTT-10-001**  
**Conversion and Subsequent Merger of Business Entities**

ISSUE

1. Are documents that confirm the conversion of two limited partnerships into two respective limited liability companies subject to Pennsylvania Realty Transfer Tax?
2. Is a document that evidences the passage of title to real estate as the result of the subsequent merger of one of the converted limited liability companies into the other converted limited liability company subject to Pennsylvania Realty Transfer Tax?

CONCLUSION

1. A document that confirms the conversion of a business entity is exempt from Pennsylvania Realty Transfer Tax as long as the requirements of 61 Pa. Code §§ 91.193(b)(4) and 91.152(b) are met
2. Although the passage of title to real estate as the result of the merger of limited liability companies can be exempt from Pennsylvania Realty Transfer Tax under 72 P.S. § 8102-C.3(12) (see also; 61 Pa. Code § 91.193(b)(12)(iii)), under the present facts, any document that evidences the passage of title to real estate as a result of the merger the limited liability companies is subject to tax.

FACTS

Taxpayer 1 is a Pennsylvania limited partnership whose assets consist of unimproved real estate located in Pennsylvania. Taxpayer 1's general partner is a Pennsylvania limited liability company with a one (1%) percent interest in Taxpayer 1. Taxpayer 1's limited partners are: "Partner 1", "Partner 2" and "Partner 3", who own 33.34 percent, 33.33 percent and 33.33 percent of the total limited partnership interest, respectively. The general partner is owned by those individuals, each with a 33.3 percent ownership interest. Corporation X is the current manager.

Taxpayer 2's ownership structure and manger are identical to Taxpayer 1's ownership structure and manager.

Taxpayer has submitted and the Department accepts for purposes of this ruling that both Taxpayer 1 and Taxpayer 2 are real estate companies as defined in 72 P.S. § 8101-C and 61 Pa. Code § 91.201.

Taxpayer 1 was organized for the purpose of developing approximately twenty-six (26) acres of real property located in Pennsylvania. Taxpayer 1 eventually developed a shopping center on the real estate.

Taxpayer 2 was organized for the purpose of developing approximately thirty (30) acres of real property located in Pennsylvania. Taxpayer 2 eventually developed a shopping center on the real estate.

In 2006, Taxpayer 1 and Taxpayer 2 entered into a Purchase and Sale Agreement with a third-party purchaser to sell the two shopping centers. The purchase and sale transaction was consummated in 2006, and Taxpayer 1 and Taxpayer 2 transferred the shopping centers to the third-party buyer. As a result of the transaction, Taxpayer 1 and Taxpayer 2's remaining assets consist solely of orphaned parcels of unimproved real property adjoining the shopping centers.



Taxpayer 1 and Taxpayer 2's owners desire to consolidate operations and bookkeeping for the two limited partnerships. It is contemplated that the conversion will be accomplished through the following transactions:

1. Conversion of Taxpayer 1 from a limited partnership to a limited liability company. To effectuate this conversion, the limited partners contemplate forming a new limited liability company ("Newco 1, LLC") into which Taxpayer 1 will merge under Pennsylvania state law. The owners of Taxpayer 1 and its general partner will own Newco 1, LLC in the same percentages as the direct and indirect interest in Taxpayer 1. The manager of Newco 1, LLC will be Taxpayer 1's manager.
2. Conversion of Taxpayer 2 from a limited partnership to a limited liability company. To effectuate this conversion, the limited partners contemplate forming a new limited liability company ("Newco 2, LLC") into which the limited partnership will merge under Pennsylvania state law. The owners of Taxpayer 2 and its general partner will own Newco 2, LLC in the same percentages as the direct and indirect interest in Taxpayer 2. The manager of Newco 2, LLC will be Taxpayer 2's manager.
3. Merger of Newco 1, LLC with and into Newco 2, LLC. Following the conversions of Taxpayer 1 and Taxpayer 2 to Newco 1, LLC and Newco 2, LLC, it is contemplated that Newco 1, LLC will be merged with and into Newco 2, LLC with Newco 2, LLC surviving the merger.

It is assumed that all of the above transactions will be effectuated for no or only nominal consideration.

Taxpayers assert that their remaining assets are orphaned parcels of unimproved real estate that will not be developed at any point in the near future. Taxpayers further assert that their limited partners and the members of the respective entities desire to consolidate all operations into one entity to avoid duplicative costs and expenses of maintaining the assets, preparing separate state and Federal tax returns, and other bookkeeping items. By consolidating all assets and operation into one real estate company, Taxpayers' limited partners and members materially desire to achieve lower costs for what Taxpayers describe as assets that will not appreciate in value.

## DISCUSSION

In response to the first issue raised in this ruling request, the Department has consistently ruled in prior rulings that a business entity can convert its form and file a non-taxable confirmatory deed to evidence the conversion as long as certain criteria are met. Those criteria are found at 61 Pa. Code §§ 91.193(b)(4) and 91.152(b). Therefore, there is no need to further address that issue.

The remaining issue raised in this ruling was addressed in a prior letter ruling, Private Letter Ruling RTT-07005, issued by this Office. In that ruling, this Office opined that the merger exclusion contained under 72 P.S. § 8102-C.3(12) and 61 Pa.Code § 91.193(b)(12) was not applicable to the merger of two limited liability companies that had been converted from limited partnerships in order to obtain the merger exclusion. This Office's ruling in that opinion applies to these facts as well.

Taxpayers argue that the desire to consolidate assets and costs under one entity constitutes a legitimate business purpose which would exempt the series of transactions and mergers from the Pennsylvania Realty Transfer Tax. Although this Office did suggest in the prior ruling that the existence of legitimate business purposes for the merger are necessary for the exemption to be applicable, the Department does not accept Taxpayers argument in this case.

The merger exemption is only applicable to the merger of two corporations. It is not applicable if the merging entities are not corporations. See Private Letter Rulings RTT-07-009 and RTT-09-004. Further, as explained in Private Letter Ruling RTT-07-005, the language of the exemption itself provides for an exception--if "the department reasonably determines that the primary intent for such merger,



consolidation or division is avoidance of the tax” then the merger is not exempt from tax. 72 P.S. § 8102-C.3.

The Department can accept that there are legitimate business purposes in the consolidation of business entities such as those asserted by the Taxpayers. However, Taxpayers could accomplish such business purposes by merging while in limited partnership form. Pennsylvania law allows for the merger of limited partnerships. 15 Pa.C.S. § 8545. Such a merger would consolidate the business entities and accomplish Taxpayers business goals. The only thing that would not be accomplished by merging the Taxpayers in limited partnership form is the avoidance of the Realty Transfer Tax because the merger exclusion does not apply to documents that evidence the merger of partnerships.

Taxpayers could also consolidate their businesses by terminating one of the limited partnerships, distributing the assets of the partnership, including the real estate, to the partners. The partners could then transfer the real estate to the remaining partnership. This would also effectuate the consolidation and Taxpayers’ intended business goals. However, Taxpayers would incur a Realty Transfer Tax liability through this method as well because transfers between individuals and business entities are taxable, even if those individuals are owners of the businesses. 72 P.S. § 8102-C.4.

Because Taxpayers can accomplish the conversion and their business goals by other means, the only purpose in Taxpayers’ conversion from limited partnerships to limited liability companies is to get Taxpayers into a business form in which they can take advantage of the statutory merger exclusion. Taxpayers are making a concerted effort through contemplated transactions to take advantage of the merger exclusion. Therefore, the primary purpose of the merger of Taxpayers after conversion into limited liability companies is the avoidance of tax. It is the Department’s position that this is the type of tax avoidance activity that the Legislature envisioned when it drafted the exception to the merger exemption. Consequently, the exception is applicable and the merger exclusion is not applicable to this case. Any document that is filed to evidence the merger of Taxpayer 1 and Taxpayer 2 after converting to limited liability companies is subject to Realty Transfer Tax.