



**April 17, 2009**  
**Pennsylvania Realty Transfer Tax**  
**No. RTT-09-003**  
**Conversion of Unincorporated Association**  
**Incorporation of Unincorporated Association**

ISSUE:

Will the incorporation of an unincorporated association pursuant to Section 5331 of the Pennsylvania Non-Profit Corporation Law of 1988 [1] ("NPCL") result in the imposition of Pennsylvania Realty Transfer Tax?

CONCLUSION:

The incorporation will not result in the imposition of Pennsylvania Realty Transfer Tax. Further, any document that may be executed and/or recorded to confirm the association's existing ownership of real estate after the incorporation is exempt from tax.

FACTS:

Taxpayer is an unincorporated association exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Taxpayer asserts that as a non-profit association, it does not have any owners, only a board of directors.

Taxpayer operates a boarding school.

Taxpayer owns several real estate assets located in the Commonwealth.[2]

Taxpayer intends to incorporate under Section 5331 of the NPCL. Taxpayer indicates that the incorporation will cause all of Taxpayer's real estate assets to vest by operation of law in the incorporated entity. As such, Taxpayer's representative asserts that "[n]o instruments of conveyance will be required to effect the incorporation, and no document will be recorded." Taxpayer also asserts that the incorporated entity, like the association, will not have any owners. It will only have a board of directors.

DISCUSSION:

Any document that effectuates or evidences the transfer of title to real estate located in the Commonwealth is subject to Pennsylvania Realty Transfer Tax. 72 P.S. § 8102-C. A document includes a deed, instrument or writing. 72 P.S. § 8101-C (definition of "document.") It also includes a document that evidences the conveyance of title to real estate by operation of law, 61 Pa. Code § 91.171.

The Realty Transfer Tax Law requires the existence of a document for the imposition of tax. Without a document, the requisite subject of the tax does not exist, and no tax can be imposed.

Taxpayer's representative asserts that no instruments of conveyance (i.e., documents) will be required to effect Taxpayer's incorporation, and no document will be recorded. This

assertion may be somewhat overstated in that Taxpayer will have to file articles of incorporation with the Department of State in order to effectuate the incorporation. Nevertheless, it is the Department's position that articles of incorporation are not the types of taxable writings contemplated under the Realty Transfer Tax Law.

Nevertheless, it is assumed for purposes of this letter ruling that Taxpayer's assertion is accurate and no deed or other instrument of conveyance will be executed or recorded in conjunction with Taxpayer's incorporation. Because there will be no deed or other document executed, there is no document upon which tax may be imposed.

Despite Taxpayer's assertion that no documents will be executed in conjunction with the incorporation, it is a relatively common practice to execute and record a deed to provide evidence and public notice of the transfer of title to real estate by operation of law. Such deeds can be filed to evidence the transfer of title to real estate by operation of law following a corporate merger or to evidence the passing of a survivorship interest in jointly held real estate. Because such documents evidence the transfer of title by operation of law, the documents are taxable absent an applicable tax exemption.

In order to fully address the question presented, it is important to understand the Realty Transfer Tax consequences associated with the execution of a deed to evidence the passage of title to Taxpayer's real estate by operation of law as a result of the incorporation should Taxpayer decide to execute such a deed.

As stated above, a deed that evidences the passage of title to real estate by operation of law is taxable absent an applicable tax exemption.

The Pennsylvania Commonwealth Court has described the incorporation of an unincorporated association under Section 5331 of the NPCL as "merely a change in the form" of the unincorporated association "rather than the creation of some new and distinct entity." Lower Allen Citizens Action Group, Inc. v. Lower Allen Township Zoning Hearing Board, et al., 500 A.2d 1253, 1257 (Pa. Cmwlth. 1985).[3] As a result, following the incorporation, the incorporated entity becomes "the legal successor-in-interest to the [a]ssociation." Id. at 1258.

Department regulations provide that a document that merely confirms an entity's existing real estate ownership following a conversion of the entity's business form is exempt from Realty Transfer Tax as long as the conversion conforms to certain criteria. 61 Pa. Code §§ 91.152(b) and 91.193(b)(4). The requisite criteria are as follows:

- (1) The entity holds title to the real estate at the time of the conversion as opposed to its owners. An entity does not hold title to real estate if the entity's owners have merely made a capital contribution of the real estate to the entity without the conveyance of title to the real estate.
- (2) Without the making of any document:
  - (i) The entity is vested with all the same property, real, personal and mixed, franchises and debts before and after the conversion.
  - (ii) The entity is subject to all the same obligations before and after the conversion.
  - (iii) Liens upon the property of the entity before the conversion are not impaired by the conversion.

(iv) Any claim existing or action or proceeding pending by or against the entity before the conversion may be prosecuted to judgment against the entity after the conversion.

(3) The entity 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 conversion.

(4) Considering all the ownership interests in the entity prior to the conversion, there is no change in proportionate ownership interests resulting from the conversion. Notwithstanding the provisions of § 91.154 (relating to documents involving corporations, partnerships, limited partnerships and other associations), when determining if there is a change in proportionate ownership interests, entities will not be considered to be entities separate from their members, partners, stockholders or shareholders; and when determining if there is a change in proportionate ownership interests resulting from the change to a limited partnership, the interests of the limited partners and general partners will both be considered.

(5) Title to real estate would not revert or be in any way impaired by reason of the conversion.

61 Pa. Code § 91.152(b)(1)-(5).

Taxpayer has indicated that it owns the real estate assets that are at issue in the ruling. Therefore, criteria #1 is satisfied.

Based upon the holding of the Commonwealth Court in the Lower Allen Twp. case, Taxpayer's incorporation under Section 5331 of the NPCL will merely effectuate a change in form and the incorporated entity becomes the successor-in-interest to the association. Therefore, criteria #2, 3 and 5 are satisfied.

Because the incorporated entity, like the association, will have a board of directors and no owners, there will not be a change in the ownership structure. Therefore, criteria #4 is satisfied.

Consequently, because all five criteria will be satisfied following Taxpayer's incorporation, any document that may be filed to evidence the passage of title to real estate as a result of the incorporation will be considered a non-taxable confirmatory deed.

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[1] The act of December 21, 1988 (P.L. 1444, No. 177).

[2] Taxpayer's representative indicates that Taxpayer owns several real estate assets in its own name. Others are held in trust by a Trustee (a Pennsylvania corporation) for Taxpayer. This letter ruling applies to the real estate that Taxpayer holds in its own name and not the real estate held in trust.

[3] In Lower Allen, the Commonwealth Court was interpreting Section 7341 of the Nonprofit Corporation Law of 1972, the act of November 15, 1972 (P.L. 1063, No. 271). That law was amended in 1988 by the NPCL, and Section 7341 was renumbered as 5331 of the NPCL.