

**IN THE MATTER OF THE PETITION OF
"B"
FOR A DECLARATORY RULING**

Doc#6347, Effective 10/3/96

Pursuant to RSA 541-A:1,IV and Rev 209.01 "B", an individual, as the petitioner, "address", through his attorney, "attorney", petitioned the Department of Revenue Administration with respect to whether the petitioner is subject to real estate transfer tax (RETT) when he transfers property to a family limited partnership. Does petitioner's transfer of property qualify as a contractual transfer pursuant to RSA 78-B requiring the payment of real estate transfer tax?

Determination Requested by the Petitioner

That the petitioner is not subject to the RETT because the transfer of property does not meet the provisions of a contractual agreement under RSA 78-B:1-a,II.

Facts Presented by the Petitioner

"B" is the owner of certain tracts or parcels of land. "B" and "C" are in the process of forming the "B" Family Limited Partnership with "C" being the sole general partner and "B" being the sole initial limited partner. "B" proposes to transfer parcels of timberland to the "B" Family Limited Partnership without consideration being paid.

Revised Statutes Annotated (RSA) at Issue

RSA 78-B TAX ON TRANSFER OF REAL PROPERTY

Administrative Rules at Issue

Rev 800 TRANSFER OF REAL PROPERTY

Petitioner's Representations

To the best of the Petitioner's knowledge, the issue which is the subject of this petition: (a) is not under examination by the Department; (b) has not been examined by the Department; (c) is not under consideration by the Department in connection with a return of a prior period; and (d) is not pending in litigation.

Findings

Under New Hampshire statute RSA 78-B:1, I(a), a tax is imposed upon the sale, granting and transfer of real estate and any interest therein. Each such sale, grant or transfer is presumed taxable unless it is specifically exempt from taxation by statute.

Exceptions granted for noncontractual transfers is contained in RSA 78-B:2. A noncontractual transfer means a transfer which satisfies the 3 elements of a gift transfer:

- a) Donative intent;
- b) Actual delivery; and
- c) Immediate relinquishment of control.

In the proposed transfer, "B", through his partnership interest, will retain some degree of control over the property to be transferred. Therefore, it does not qualify as a noncontractual transfer.

The proposed transfer also does not qualify for any of the other exceptions contained in RSA 78-B:2.

Ruling

Based upon the provisions of RSA 78-B:1 and 78-B:2, the transfer of the real estate to a Family Limited Partnership, as the vehicle for making a gift to children and grandchildren, is a contractual transfer and therefore subject to the tax imposed under Chapter 78-B.

Stanley R. Arnold, Commissioner
Department of Revenue Administration