

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE ADMINISTRATION**

IN THE MATTER OF THE PETITION OF

Member 1 and Member 2

FOR A DECLARATORY RULING

REDACTED DOCUMENT

Document #12204 Effective 6-8-2017

Pursuant to RSA 541-A:1, V and RSA 541-A:16, II(b) and N.H. Code of Admin. Rules Rev 209.01, the Petitioners request a declaratory ruling with respect to real estate transfer tax.

Pursuant to N.H. Code of Admin. Rules Rev 209.02, this declaratory ruling is issued to the Petitioners with respect to the particular circumstances and facts discussed herein and represents a holding of the department on those circumstances and facts for Petitioners only.

FACTS PRESENTED BY THE PETITIONERS

ABC, LLC, DEF, LLC, and GHI, LLC (collectively, the “Companies”) are each multi-member New Hampshire limited liability companies with a principal business address located in New Hampshire. Member 1 and Member 2 (the “Petitioners”) are the only members of the Companies and each has a 50% membership interest in each Company. Each Company meets the definition of a “real estate holding company” pursuant to RSA 78-B:1-a, VI.

ABC, LLC owns multiple rental properties and there are mortgages on several of these properties. DEF, LLC owns multiple rental properties and there are mortgages on at least some of these properties. GHI, LLC owns one property.

In order to streamline management, reduce paperwork, and simplify filings, the Petitioners seek to merge the Companies into one limited liability company. The Petitioners represent that DEF, LLC and GHI, LLC will merge into ABC, LLC pursuant to RSA 304-C:155 (Mergers of Limited Liability Companies with Other Business Entities). The Petitioners further represent that:

1. Petitioners will submit all necessary statutory documents to effectuate the merger.
2. ABC, LLC will be the surviving limited liability company.
3. Immediately following the merger, the Petitioners will hold all of the membership interests in ABC, LLC in the same percentage as existed pre-merger (Member 1, 50% and Member 2, 50%).
4. The members of ABC, LLC will receive no consideration for the merger of their interests in DEF, LLC and GHI, LLC into ABC, LLC.
5. The combined assets and liabilities of the Companies before the merger will be the same as all of the assets and liabilities of ABC, LLC after the merger.

DETERMINATION REQUESTED BY THE PETITIONERS

Petitioners request the following ruling:

The merger of DEF, LLC and GHI, LLC into ABC, LLC, under the provisions of RSA 304-C:155, shall not create a taxable transfer of the real estate owned by DEF, LLC or GHI, LLC for purposes of the real estate transfer tax, as the tax does not apply pursuant to RSA 78-B:2.

REVISED STATUTES ANNOTATED (RSA) AT ISSUE

The following New Hampshire statutes are relevant to the Petitioners' request for a declaratory ruling:

RSA 78-B:1, I (1999)
RSA 78-B:2 (2016)
RSA 304-C:155 (2013)

OTHER LAWS OR RULES

N.H. Code of Admin. Rules Rev 209.01
N.H. Code of Admin. Rules Rev 209.02

PETITIONERS' REPRESENTATIONS

To the best of the Petitioners' knowledge, the issue and the particular circumstances which are the subject of the petition:

- a. Are not under examination by the Department;
- b. Have not been examined by the Department;
- c. Are not under consideration by the Department in connection with a return of a prior period; and
- d. Are not pending in litigation.

DISCUSSION

A. Real Estate Transfer Tax

Pursuant to RSA 78-B:1, I(a), the RETT is "[a] tax...imposed upon the sale, granting and transfer of real estate and any interest therein including transfers by operation of law." Further, each sale, granting and transfer of real estate, and each sale, granting and transfer of an interest in real estate "shall be presumed taxable unless it is specifically exempt from taxation under RSA 78-B:2." RSA 78-B:1, I(a).

Petitioners represent that the Companies are each multi-member New Hampshire limited liability companies. The Petitioners further represent that they are the only members of the Companies, and each Petitioner has a 50% membership interest in each Company. According to the petition, the Companies will be merged into one limited liability company pursuant to RSA 304-C:155 in order to streamline management, reduce paperwork, and simplify filings. Immediately following the merger, the Petitioners will hold all of the membership interests in the surviving entity in the same percentage as existed pre-merger. The surviving entity, ABC, LLC, will not only retain its pre-merger assets and liabilities, but after the merger will also possess the assets and liabilities that were formerly held by DEF, LLC and GHI, LLC.

The Petitioners seek a ruling that the merger of the Companies is exempt from RETT under RSA 78-B:2, without specifying which of the exceptions described in that section they believe applies to the

merger. However, every sale, granting and transfer is “presumed taxable unless it is specifically exempt from taxation under RSA 78-B:2.” RSA 78-B:1, I(a).

A previously existing exception listed in RSA 78-B:2, which has since been repealed, specifically exempted certain mergers from RETT. In 1992, the New Hampshire legislature adopted and the governor signed Chapter 203:2 into law, which amended the RETT statute by inserting RSA 78-B:2, XIV. This paragraph added an exemption from RETT covering “a transfer of title pursuant to a merger, consolidation or other reorganization qualifying as a tax-free reorganization as defined under the United States Internal Revenue Code of 1986, section 368, as amended.”

The exemption provided by paragraph XIV was repealed when the legislature adopted Chapter 158:27 in 2001, and has not been reenacted since. Additionally, none of the remaining exceptions in RSA 78-B:2 “specifically exempt,” as required by RSA 78-B:1, I(a), the merger of multiple entities with identical ownership. As none of the exceptions in RSA 78-B:2 specifically exempt transactions such as the Petitioners’, the merger described in the petition is not exempt from RETT under RSA 78-B:2.

RULING

Based on the facts represented by the Petitioners, as well as the statutory and regulatory provisions discussed above, the Department makes the following ruling:

The merger of DEF, LLC and GHI, LLC into ABC, LLC, under the provisions of RSA 304-C:155, are not exempt under RSA 78-B:2 from the real estate transfer tax.

Date

John T. Beardmore, Commissioner