

In The Matter of the Petition of "A"

for a Declaratory Ruling

DOC #4321, Effective October 7, 1987

Pursuant to RSA 541-A: 1, I-b, 541-A: 2, I, (c) and Rev PART 209 of the New Hampshire Code of Administrative Rules, "A" Esq., a ... attorney having his principle office at has petitioned the Department of Revenue Administration for Declaratory Ruling stating that if all the New Hampshire property owned by a domiciliary is employed in a New Hampshire proprietary business, and if all that property is contributed to a corporation with all stock held by the aforementioned that upon the death of this individual the New Hampshire holdings of that corporation would not be subject to the application of any inheritance-type tax to the State of New Hampshire.

The petitioner presents no additional facts, aside from those recited as the question above which are necessary to a resolution of the issues presented.

Under the specific circumstances presented by the taxpayer, and limited to those circumstances, the Department of Revenue Administration hereby rules that neither the Tax on Legacies and Successions of RSA 86 nor the Transfer Tax upon the Personal Property of Non-Resident Decedents of RSA 89 will apply to the incorporated assets of the taxpayer who dies domiciled in.....

The Legacy and Succession Tax applies as stated in RSA 86: 6

86: 6 Taxable Property and Tax Rate.

I. All property within the jurisdiction of the state, real or personal, and any interest therein, belonging to domiciliaries of the state; and all real estate within the state, or any interest therein, belonging to persons who are not domiciliaries of the state; which shall pass by will, or by the laws regulating intestate successions, or by deed, grant bargain, sale or gift, made in contemplation of death, or made or intended to take effect in possession or enjoyment at or after the death of the grantor or donor, to any person, absolutely or in trust, shall be subject to a tax of 15 percent of its value for the use of the state, except as provided in paragraphs II and III and RSA 86:9-a.

Although the first clause of RSA 86:6 applies to "all property within the jurisdiction" it is qualified by "belonging to domiciliaries of the state." In your fact pattern it is evident that the New Hampshire property is not owned by a "domiciliary"; it's owned by a corporation, which will not die and pass its assets by will, the laws of intestate succession, or in contemplation of death. The second clause of RSA 86:6 concerns non-domiciliaries who hold real estate in New Hampshire. This clause is likewise qualified by a death requirement which will not be met in your fact pattern because the corporation, not the shareholder owns the New Hampshire real estate.

The Transfer Tax upon the Personal Property of non-resident decedents applies as stated in RSA 89:1.

89:1 Taxable Property. All personal property within the jurisdiction of the state, and any interest therein, belonging to persons whose domicile is without the state shall, upon the death of the owner, be subject to a tax of two per cent of its value for the use of the state, upon its transfer, payment, or delivery to the executor, administrator, or trustee of the estate of said deceased.

Your fact pattern presents that all property, real and personal, was to be placed into a corporation. It is apparent therefore, that the "death of the owner" condition will never be met for your personal property in New Hampshire. Thus, RSA 89 will not apply to your taxpayer.

There is always the possibility in New Hampshire for a tax on inheritances to be calculated according to RSA 87 Taxation of Transfers of Certain Estates. This tax applies as stated in RSA 87:1.

87:1 Tax Imposed. In addition to taxes imposed by chapter 86 an estate tax is hereby imposed upon the transfer of all estates which are subject to an estate tax under the provisions of the United States internal revenue code and amendments thereto where the decedent at the time of his death was domiciled in this state. The amount of said New Hampshire estate tax shall be equal to the extent, if any, of the excess of the credit allowable under said United States internal revenue code over the aggregate amount of all estate, inheritance, transfer, legacy and succession taxes paid to any state or territory or the District of Columbia in respect to any property in the estate of said decedent. Provided that such estate tax hereby imposed shall in no case exceed the extent to which its payment will effect a savings or diminution in the amount of the United States estate tax payable by or out of the estate of the decedent had this chapter not been enacted. The tax hereby imposed shall be for the use of the state. Furthermore an estate tax is hereby imposed upon the transfer of real property and tangible personal property in this state of every person who at the time of his death was a resident of the United States but not domiciled in this state, and upon the transfer of all property, real and personal, within this state of every person who at the time of his death was not a resident of the United States, the amount of which shall be a sum equal to such proportion of the amount by which the credit allowable under the applicable United States revenue act for estate, transfer, legacy, succession and inheritance taxes actually paid to several states exceeds the amount actually paid for such taxes exclusive of estate taxes based upon the difference between such credit and other estate, transfer, legacy, succession and Inheritance taxes, as the value of the property in this state bears to the value of the entire estate subject to an estate tax under the provisions of the United States internal revenue code.

However, because neither RSA 86 nor RSA 89 apply to your taxpayer it is clear that RSA 87 also would not apply. Thus, it appears clear that in your fact pattern no inheritance-type tax will apply to your taxpayer upon his death as long as he remains a non-New Hampshire domiciliary.

Everett V. Taylor, Commissioner