

IN THE MATTER OF THE PETITION OF

.....[Company 1, Company 2, Company 3 and Company 4].....

FOR A DECLARATORY RULING

Document #5983, effective 2-2-95

Pursuant to RSA 541-A: 1, IV, 541-A:2,I(d) and Rev. 209.01, et seq., [Company 1] and [Company 2], (hereinafter called [Company 1] and [Company 2] separately but collectively as the "Petitioner"),, New Hampshire 03301, through its attorney, [attorney] [Company 3], petitioned the Department of Revenue Administration with respect to whether the petitioner is subject to the Real Estate Transfer Tax ("RETT").

Determination Requested by Petitioner

That the petitioner is not subject to the RETT because under current law [Company 1] may transfer its New Hampshire real estate to a newly formed closely held corporation, [Company 4] and [Company 4], may then merge with [Company 2], under tax exemptions contained in NH RSA 78-B:2.

Facts Presented by Petitioner

1. [Company 1], a NH general partnership, was formed a number of years ago and one of its purposes was to acquire and lease [properties] to [Company 2], a NH general business corporation whose principal function is to run [properties] .

2. The ownership interests in [Company 1] (partnership) and [Company 2] (new corporation) are the following:

[name] 33 1/3%

[name] 33 1/3%

[name] 33 1/3%

3. The ownership interests of [Company 2] are the following:

[name] 38.4%

[name] 38.4%

[name] 23.2%

4. On or about January 1, 1995, [Company 1] will transfer the real estate to [Company 4].

5. Subsequent to the transfer of the realty, [Company 4] will merge with [Company 2] under the provision of Internal Revenue Code section 368(a)(1)(A) with the real estate being owned by [Company 2] as a result of the merger.

REVISED STATUTES ANNOTATED (RSA) AT ISSUE

RSA 78-B:2 XIV

RSA 78-B:2 XVI

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 of Revenue Administration ("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

In view of the foregoing facts and representations and specifically based upon them, the Department of Revenue Administration finds that the following laws cited by the petitioner apply to the above situation:

1. RSA 78-B, the Tax On Transfer Of Real Property law excepts these transactions from taxation. The law, **RSA 78-B:2** states:

The tax imposed by this chapter shall not apply:

XIV. To 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.

XVI. To a transfer of title required by an alteration of an entity's form of organization if the beneficial owners of the transferor own 100 percent of the transferee immediately after the transfer.

Ruling

Based on the provisions of RSA 78-B:2, the petitioner's transactions described herein are exempt from the RETT. This determination is based upon the fact that there would be an "alteration of an entity's form of organization" and the beneficial owners and their ownership percentages would be the same in the partnership and in the holding company, [Company 4]. Then, as long as the merger of [Company 4] and [Company 2] qualifies as an Internal Revenue Code section 368 merger, the events described herein would be exempt from the RETT.

Stanley R. Arnold, Commissioner