

IN THE MATTER OF THE PETITION OF

"Y", Inc

FOR A DECLARATORY RULING

Doc. #5302, Eff. December 26, 1991

Pursuant to RSA 541-A:1, IV, 541-A:2,I(d) and Rev. 209.01, et seq., the "Y", Inc ,
..... Street,, New Hampshire 03103, Federal Identification Number yy-
yyyyyyy, through its attorneys, , petitioned the Department of Revenue
Administration with respect to the Tax on the Transfer of Real Property, RSA 78-B,
consequences of a proposed real estate transfer.

The "Y", Inc. has requested the following determinations:

- A. The transfer of real estate by the "Y", Inc., a not-for-profit organization, to "Z",
Inc., a not-for-profit corporation, without consideration, qualifies under RSA 78-B:1-
a and RSA 78-B:2 as a transfer excluded from the Tax on Transfer of Real Estate.
- B. That a transfer of real estate by the "Y", Inc. to "Z", Inc., subject to a mortgage,
is an excluded transfer under RSA 78-B:1-a and RSA 78-B:2, so long as the "Y", Inc.
will continue to be the only obligor under the terms of the promissory note.
- C. That a transfer of real estate by the "Y", Inc. to "Z", Inc., with the intent that "Z",
Inc. guaranty, in the future, a borrowing by the "Y",Inc., and securing that guaranty
by a mortgage on its real estate, is excluded from the Tax on Transfer of Real
Property, pursuant to RSA 78-B:1-a and RSA 78-B:2.

**The petitioner has made the following representations (quoted verbatim
below):**

- 1. The petitioner in this matter is Y", Inc., Street,, New Hampshire
03103, Federal ID #yy-yyyyyyy.
- 2. This petition refers to New Hampshire RSA 78-B, Tax on Transfer of Real Property,
specifically, RSA 78-B:1, 1-a, and 2.
- 3. The "Y", Inc. is a tax exempt institution, engaged in the business of providing
..... services in the area.
- 4. The "Y", Inc. currently owns several parcels of real estate in the City of,
which are used solely for furthering the purpose of the corporation. On occasion, the
corporation will rent a portion of its facilities to such organizations as Alcoholics
Anonymous or the Visiting Nurses Association.
- 5. The corporation has recently undertaken a corporate restructuring, resulting in a
parent not-for-profit corporation known as the "X" Foundation (the "Foundation"),
which acts as the parent corporation of the "Y", Inc. (the "Center"), and "Z", Inc. The
Center continues to carry out its purpose of providing mental health services; the

purpose of "Z", Inc. is to act solely as a not-for-profit real estate holding company, qualified under Section 501(c)(2) of the Internal Revenue Service Code.

6. The proposed transaction is the transfer of real estate currently owned by the Center to "Z", Inc. One purpose of the transfer will be to separate potential liabilities arising from operations of the Center from the operation of the real estate.

7. The Center is negotiating financing with various lenders for a line of credit. In connection with this possible financing extension, the Center may be requested to secure the financing with a mortgage on its real estate.

8. The transfer from the Center to "Z", Inc. of its real estate will be a "non-contractual transfer" pursuant to RSA 78-B:1-a and RSA 78-B:2. A deed will be drawn and the assets will merely be removed from the books of the transferor and placed in the books of the transferee. The transfer from the Center will be a gift to "Z", Inc., and will satisfy the three elements of the donative intent, actual delivery, and immediate relinquishment of control.

9. Chapter 800, Rev. 802.06, Transfer With an Outstanding Mortgage, states that, "Real estate, which has an outstanding mortgage, and is transferred as a gift, shall be subject to tax as defined in RSA 78-B:1."

10. If the property is transferred with a mortgage already in place securing the line of credit financing, the obligor under the loan documents will still be the Center. The transfer will not relieve the Center of its obligations to pay the financing bank nor will it obligate "Z", Inc. to pay those obligations.

11. If, however, the property is transferred prior to the placing of mortgages on the property, then the realty corporation will act as a guarantor of the line of credit, and that a mortgage to secure the guaranty will be placed on the real estate after the transfer.

12. To the best knowledge of the "Y", Inc. the issues which are the subject of this petition are not under examination by the department, nor have they been examined by the department, nor are under consideration by the department in connection with the return of a prior period, nor are pending in litigation.

13. The "Y", Inc. is undergoing a corporate reorganization, the purpose of which is to create a separate, not-for-profit, 501(c) corporation for the purpose of holding real estate assets separate and apart from the "Y", Inc. itself. Since this reorganization involves charitable corporations qualified under Internal Revenue Code Section 501, the reorganization falls outside of the reorganization requirements of Section 368 of the Internal Revenue Code.

In view of the foregoing representations and specifically based upon them, the Department of Revenue finds the following:

1. The tax on transfer of real property is imposed on all real estate transfers except those specifically exempt from tax. The law, RSA 78-B:1, I, states:

(a) A tax is imposed upon the sale, granting and transfer of real estate and any interest therein including transfers by operation of law. Each sale, grant and transfer of real estate, and each sale, grant and transfer of an interest in real estate shall be presumed taxable unless it is specifically exempt from taxation under RSA 78-B:2 . [emphasis added]

The corresponding Administrative Rule reads:

Rev 802.01 All Transfers . The tax shall apply to all transfers whether sale or grant, and whether or not the transfer is recorded with the register of deeds, unless specifically exempted under RSA 78-B:2 and PART Rev 803 of this chapter.

2. The petitioner has asserted that the transfer will be a non-contractual transfer. The law is clear in exempting and defining non-contractual transfers.

The law states:

78:B:2 Exceptions. The tax imposed by this chapter shall not apply:

IX. To noncontractual transfers.

78:B:1 (a) Definitions. In this chapter:

III. "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.

3. The department finds that the transfer as presented does not qualify as a non-contractual transfer. The requirement that there be "donative intent" is not present in the proposed transfer. The stated purpose of the transfer is to " separate potential liabilities arising from the operations of the center", therefore the clear intent of the transfer is to preserve the assets of the corporation, a business intent.

4. The department finds that the Tax on the Transfer of Real Property applies to all three of the determinations requested.

Stanley R. Arnold, Commissioner