

**IN THE MATTER OF**

**"A" and "B"**

**FOR A DECLARATORY RULING**

**Doc. #5710, Eff. September 29, 1993**

Pursuant to RSA 541-A:1, IV, 541-A:2, I(d) and Rev. 209.01, et seq., "A" and "B", Federal Identification Number ....., through their 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 following determination has been requested:

"A" and "B" seek a determination whether the conveyance of their woodland property by Quitclaim Deed without consideration, to the ..... Trust would be subject to the tax on the transfer of real property."

The petitioner has made the following representations:

1. Reason for Transaction

"A" and "B" own a large tract of land of approximately 358 acres in ....., New Hampshire. The land is rugged woodland with no frontage on a public way. The land has been used by four generations of the "A" and "B" family for recreational purposes. "A" and "B" would like the land to remain in their family after their deaths for the benefit of their children, grandchildren and great grandchildren. To this end, "A" and "B" have created the "C" Trust, an irrevocable trust whose beneficial interest is represented by 1,800 transferable shares. At present, "A" and "B" each hold 900 shares of the beneficial interest of the trust. "A" and "B" plan to give shares of the beneficial interest to each of their six children and/or leave shares of beneficial interest to their children in their wills. "A" and "B" have funded the "C" Trust with a small amount of money.

2. Description of the Transaction

"A" and "B" propose to convey the 358 acre parcel to the trust by Quitclaim deed.

3. Certificates of Beneficial Interest . The entire beneficial interest in the Trust shall be represented by One Thousand Eight Hundred (1,800) shares of certificates of beneficial interest. The certificates of beneficial interest and the shares represented thereby shall be hereinafter referred to as CBI's.

4. Issuance of Shares . In consideration for the conveyance of the ..... Property pursuant to this Agreement, shares shall be issued as follows:

"A" 900 shares

"B" 900 shares

5. TERMINATION AND AMENDMENT

This Trust may be terminated or amended at any time by the affirmative vote of two-thirds of the shares issued and outstanding. In any event, this Trust shall terminate twenty-one (21) years after the death of the last surviving grandchild of the Grantors living at the time this

Trust Agreement was executed. At the termination of the Trust the Trustees shall prepare a final account to pay a liquidating dividend to the holders of CBI's in accordance with the number of shares held by the holder of each CBI.

6. 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.
  - B. Has not been examined by the Department of Revenue Administration and the statutory period of limitation on assessment per RSA 21-J:29 has not expired.
  - C. Is not under consideration by the Department in connection with a return of a prior period.
  - D. Is not pending in litigation.

In view of the foregoing representations and specifically based upon them, the Department of Revenue Administration 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. Based on petitioner representation number 5 the proposed trust is deemed to be a revocable trust. Therefore, it is Administrative Rule Rev 802.10, Revocable Trusts of Real Property, which directly defines the tax treatment of the transaction in question. The rule states as follows:

Rev 802.10 Revocable Trusts of Real Property . Except as hereinafter provided, the following shall apply to all transfers of real property from or to a revocable trust:

- (a) Transfers to or from a revocable trust shall be classified as a contractual transfer as described in RSA 78-B:1-a,II.
- (b) The measure of tax upon such transfer shall be the actual price or consideration as provided by RSA 78-B:1,I(b).
- (c) In determining the amount of the actual price of consideration for the transfer of real estate to or from a revocable trust, the department shall not presume that the price or consideration is the fair market value of the property transferred as authorized by RSA 78-B:9,III., where both of the following criteria apply to the trust:

- (1) the beneficial interest in the trust is not represented by transferable shares, and

(2) the trust is created and funded for estate planning purposes as a testamentary substitute.

(d) For the purposes of subsection (c), above, "beneficial interest in the trust is not represented by transferrable shares", means an interest in an organization which is not a corporation, joint stock company, business trust, common law trust, Massachusetts trust, real estate investment trust, home owners or condominium association, or other entity where:

(1) property is placed in the hands of a trustee, who acts apart from the beneficiaries and who manages and deals with the property as principal for the use and benefit of the beneficiaries, and

(2) the beneficiaries hold shares that are freely transferable without necessity of securing prior member approval or causing a dissolution of the organization.

3. Based on Administrative Rule 802.10 and the representations of fact heretofore stated the department finds that the conveyance by "A" and "B" of the woodland parcel by Quitclaim Deed without consideration, to the "C" Trust would be subject to the tax under RSA 78-B.

Stanley R. Arnold, Commissioner