

**IN THE MATTER OF THE PETITION OF "A" PARTNERSHIP**

**FOR A DECLARATORY RULING**

**Document #6484, eff. 3-28-97**

Pursuant to RSA 541-A:1, IV, 541-A:2, I(d) and Rev 209.01 et seq., "A" PARTNERSHIP, petitioned the Department of Revenue Administration with respect to the real estate transfer tax.

**DETERMINATION REQUESTED BY THE PETITIONER**

Under a proposed transaction, "A" PARTNERSHIP [partnership] will convey the (business) located in ....., New Hampshire from the partnership to "B", [company] a limited liability company to be formed for the ownership and operation of the motel.

Petitioner requests a response to the following question:

Will the transfer of the real estate owned by "A" PARTNERSHIP be exempt from the real estate transfer tax under RSA 78-B:2 XVII when it is transferred to "B", a limited liability company formed under RSA 304-C?

**FACTS PRESENTED BY THE PETITIONERS**

The petitioners made the following representations of relevant facts:

The partnership was formed as a general partnership pursuant to an agreement dated ....., 1990 to acquire and operate a motel;

The general partners of the partnership are:

(names of two partners have been removed)

Each partner has a 50% ownership interest in the partnership;

The purpose of the transaction is to convert the partnership into a limited liability company by transferring the real estate and business activity from the partnership to the company;

The owners and ownership percentages of the company will be identical to the owners and ownership percentage of the partnership;

The assets and liabilities of the company immediately after the transfer will be identical to the assets and liabilities of the partnership immediately before the transfer; and

The partners have an unrestricted right to assign or transfer their interest in the partnership and the company will have transferable interests.

**REVISED STATUTES ANNOTATED [RSA] AT ISSUE**

RSA 78-B:2 XVII

## **RULES AT ISSUE**

N.H. Code Admin. R. Rev 803.03

## **PETITIONER'S REPRESENTATIONS**

To the best of petitioner's knowledge, the issues that are the subject of this petition:

- 1) Are not under examination by the department;
- 2) Have not been examined by the department;
- 3) Are not under consideration by the department in connection with a return of a prior period; and
- 4) Are not pending in litigation.

## **FINDINGS**

An exception to the applicability of the real estate transfer tax was created by the Legislature during the 1996 session. Chapter 212 of the Laws of 1996 enacted RSA 78-B:2 XVII which exempts a transfer of title from an entity, the ownership of which is represented by transferable shares, to another entity whose ownership is also represented by transferable shares when:

1. The transfer of title is coincidental to a change in the transferor's form of organization;
2. The assets and liabilities of the transferor immediately before the change in form are the same as the assets and liabilities of the transferee immediately after the change in form; and
3. The owner or owners of the transferor and transferee are the same individuals with identical ownership percentages.

In this matter, the transfer will be the result of a change in the form of organization. The total assets and liabilities of the transferor will become the assets and liabilities of the transferee immediately following the change in form. The partners of the partnership will become the members of the company and the individuals will retain identical ownership percentages following the change.

The remaining issue deals with the transferability of the partnership interests. In accordance with Rev 803.03 (a), a transferable interest is one where all of the equity interests and ownership rights in an organization can be sold, exchanged, assigned or transferred in any manner by the owner of the interest.

The current *Agreement of Partnership* for the partnership, although it appears to restrict the transferability in Sections 9 and 13 by requiring a consent from the other partner, may provide a transferable interest so long as it is legally possible to transfer the interest. The Amended and Restated Agreement of Partnership for the partnership eliminates the restrictions and would meet the definition of transferable interest as provided in Rev

803.03(a). The Articles of Agreement for the company do not contain any restrictions on the transferability of the members' interest.

## **RULINGS**

Based on the facts as represented by the petitioners, the language contained in the partnership agreement, the proposed amended partnership agreement, the proposed articles of agreement for the limited liability company and the statutory and regulatory provisions discussed above, the department makes the following ruling:

The transfer of the real estate from the partnership to the company will be exempt from the real estate transfer tax under the current *Agreement of Partnership*, assuming it is legally possible to accomplish the transfer, or the *Amended and Restated Agreement of Partnership* and the proposed *Articles of Agreement* for the company.

Stanley R. Arnold, Commissioner