

**In the Matter of the Petition of Jane Doe
for a Declaratory Ruling**

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Pursuant to RSA 541-A:1, IV, 541-A:16, II (b) and Rev 209.01 et seq., Petitioner "Jane Doe" petitioned the Department of Revenue Administration for a ruling on the tax consequences with respect to four parties contemplating a transaction involving the purchase/sale of a 50% partnership interest and subsequent liquidation of the partnership, A Limited Partnership, under Federal IRC 708(b)(1)(B).

Determination Requested by Petitioner

Pursuant to RSA 541-A:1, IV, 541-A:16, II (b) and Rev 209.01 et seq., Petitioner Jane Doe petitioned the Department of Revenue Administration for a ruling on the tax consequences with respect to four parties contemplating a transaction involving the purchase/sale of a 50% partnership interest and subsequent liquidation of the partnership, A Limited Partnership, under Federal IRC 708(b)(1)(B).

Facts Presented by the Petitioner

The Petitioner is a 50% partner. Petitioner will form a single member LLC, Jane Doe LLC, to purchase the 50% interest of her associate partner John Doe for an agreed upon amount of money. It is the intent of the parties that the LLC becomes a Substituted Limited Partner with respect to Mr. Doe's interest.

Revised Statutes Annotated (RSA) at Issue

RSA 77 A: 4 XIV

Rules at Issue

N/A

Other Laws or Rules

N/A

Petitioners' Representations

To the best of the petitioner's knowledge and belief the issue which is the subject of this petition:

Is not under examination by the Department; or

Has been examined by the Department; or

Is under consideration by the Department in connection with a return of a prior period; or

Is pending in litigation.

Petitioner's Position

Petitioner represents that pursuant to IRC Section 708, the sale of a 50% interest will terminate the partnership. Thus, all of the assets of the partnership would be deemed to have been distributed to Jane Doe for federal income tax purposes. Since the cash received by Jane Doe would not exceed the basis of her partnership interest, no gain would be recognized on the termination distribution.

No adjustment to the basis of partnership assets would need to be reflected on the partnership's books or in its final return of income. Allocation among the partnership's assets of the basis of Jane Doe's partnership interest, reduced by cash received in the liquidation distribution, would be made pursuant to the provisions of IRC Section 732. Thus, there is no "net increase" in the basis of the partnership assets as contemplated by RSA 77A:5 XIV. There is only an allocation of the purchase price among the partnership assets deemed to have been received by Jane Doe as a result of the deemed termination of the partnership pursuant to IRC sections 708 and 732.

Petitioner believes that no addition to gross business profits is appropriate under RSA 77 A: 4 XIV because there would be no "net increase in the basis " through the sale ... of the interest." Instead, the net increase in the basis would result solely as a result of the deemed termination of the partnership under federal income tax rules.

Findings

The New Hampshire Supreme Court has stated that the starting point in the interpretation of the business profits tax statute is the language of the statute itself. *Bradley Real Estate Trust v Taylor*, 128 N.H. 441 (1986). Accordingly, it is appropriate to turn to the relevant statutory and regulatory language to consider the affect of New Hampshire law upon the facts stipulated by the Petitioner.

RSA 77- A: 4, XIV states:

In the case of a business organization where an interest or beneficial *interest in the organization has been sold or exchanged*;

An addition to gross business profits of an amount equal to the net *increase in the basis of all underlying assets transferred or sold* through the sale or exchange of the interest; and

The increase in the basis of the assets shall be *determined in accordance with the provisions of the Internal Revenue Code as defined by RSA 77-A: 1, XX.*

The following is an analysis of the statutory requirements:

(a) Sale or Exchange Requirement.

The proposed transaction meets the sale or exchange requirement since it is based upon the sale of limited partner Jonh Doe's 50% interest to Jane Doe LLC for an agreed upon amount of money.

(b) Increase in Basis of Underlying Assets.

This section is best addressed by answering the following question:

Will the proposed transaction result in an increase in the basis of the assets underlying the purchase of John Doe's 50% limited partnership interest?

Petitioner submitted a cost allocation worksheet as part of her declaratory ruling request. The worksheet is labeled Allocation of Cost of Partnership Interest to be Acquired from John Doe Among Assets Received by Jane Doe at Termination. The worksheet culminates in an allocation of the money in excess of market value over book value of the assets acquired/received by Jane Doe.

The proposed transaction will result in an increase in the basis of the assets underlying the purchase of John Doe's 50% limited partnership interest and thereby meets the second requirement of the statute.

(c) Determination of the Increase Under the Code.

The increase in the basis of the assets shall be determined in accordance with the provisions of the Internal Revenue Code of 1986 in effect on December 31, 1998. Here it is necessary to calculate the new basis of the assets used by the business organization after the completion of the transaction and compare such basis to the basis of the assets prior to the transaction. To the extent that there is an increase in the basis of the assets, such basis increase falls within the parameters of the statutory language.

Ruling

Based upon the facts as presented by the petitioner and the statutory provisions discussed above, the Department makes the following ruling:

The gain on the proposed transaction as represented by the increase in basis of the assets as determined in accordance with the provisions of the Internal Revenue Code shall be reported by A Limited Partnership, a New Hampshire partnership, on its final NH1065 subject to NHBPT and NHBET pursuant to RSA 77-A:2 and RSA 77-E:2.

Stanley R. Arnold, Commissioner