

IN THE MATTER OF THE PETITION OF
Residents of the Retirement Community
FOR A DECLARATORY RULING

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Pursuant to RSA 541-A:1, IV, 541-A:2, I(d) and Rev 209.01 et seq., Residents of a retirement community petitioned the Department of Revenue Administration with respect to whether or not the stock issued upon the signing of the residency agreement by the petitioner is subject to a transfer tax.

DETERMINATION REQUESTED BY THE PETITIONER

Petitioner requests a response to the following question:

1. Are lease interests subject to transfer taxes if the lease interests are proven to be exempt under Rev 802.01 (f)?

FACTS PRESENTED BY THE PETITIONERS

The petitioners made the following representations of relevant facts:

The retirement community is a set of buildings located in New Hampshire and owned by the retirement community association, (a New Hampshire corporation) The land is leased from a hospital, also of New Hampshire. The manager of the property and exclusive agent is ABC. The retirement community provides residential apartment units and cottages, dining, recreational, library and hair salon facilities, emergency communication system, health screening, transportation and an on-site nurse to people 55 or older who are capable of independent living.

In order to become a resident, an applicant must be 55 years of age or older, capable of independent living, and sign a residency agreement, A spouse or co-resident less than 55 years old may be accepted for residence if they are also capable of caring for themselves.

Upon signing a residency agreement, the resident is issued a stock certificate that is not freely transferrable but must be sold through the manager of the co-operative operating the retirement home.

The residency agreement is the equivalent of a lease; a resident shall be evicted for failure to pay monthly charges.

The residency agreement, and therefore the stock certificate, cannot ever approach a duration of 99 years.

The land upon which the leased units sit has a 98 year lease with no terms for extension.

REVISED STATUTES ANNOTATED [RSA] AT ISSUE

R.S.A. 78-B

RULES AT ISSUE

N.H. Code Admin. R. Rev 802.01

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

RSA 78-B: 1 imposes the real estate transfer tax on transfers of real estate and interest therein. Rev 802.01 (f) (2) provides as follows:

the lease of real estate shall be subject to the real estate transfer tax based on the fair market value of the property when the term of the lease is:

- (1) For a period of 99 years or more; or
- (2) For a period of less than 99 years and renewal rights could extend the total period.

A residency agreement must be signed by all occupants whether they be a resident or a subtenant according to the residency agreement.

Death of the last resident or subtenant is a condition for termination of the residency agreement.

The residency agreement includes a certificate of stock and states that the certificate is not freely transferrable.

The residency agreement is the equivalent of a lease. However, the residency agreement by its terms is not for a period of 99 years or more. It is for the remaining duration of the resident's life. This duration is for an uncertain period which could last for 1 day, 100 years or more.

Additionally, the provisions in the residency agreement allowing a co-resident or subtenant to continue to live at the retirement community after the death of one

resident are not renewal rights extending the total period of time to 99 years or more. An addition of a co-resident or subtenant to the residency agreement extends the lease for an uncertain period of time. This uncertain time period could, in theory, extend beyond a period of 99 years. However, the term of the lease would not be for 99 years but an uncertain amount of time measured by the joint lives of resident and co-resident and subtenant.

RULINGS

Based on the facts as represented by the petitioners and the statutory provisions discussed above, the department makes the following rulings:

- (1) The residency agreement is not for a period of 99 years or more
- (2) The provisions in the residency agreement allowing the subtenants or co-residents does not create renewal rights for a period of more than 99 years.
- (3) The lease interests are exempt under Rev 802.01 (f) and not subject to transfer taxes.

Stanley R. Arnold, Commissioner