

STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE ADMINISTRATION

IN THE MATTER OF THE PETITION OF

Smith and Newco LLC

FOR A DECLARATORY RULING

REDACTED DOCUMENT

Document #13072 Effective 7-21-20

Pursuant to RSA 541-A:1, V and RSA 541-A:16, II(b) and N.H. Code of Administrative Rules, Rev 209.01, the Petitioner requests a declaratory ruling with respect to Real Estate Transfer Tax.

Pursuant to N.H. Code of Administrative Rules, Rev 209.02, this declaratory ruling is issued to the Petitioner with respect to the particular circumstances and facts discussed herein and represents a holding of the New Hampshire Department of Revenue Administration (“Department”) on those circumstances and facts for Petitioner only.

FACTS PRESENTED BY THE PETITIONER

The Petitioner, Smith (“Petitioner” or “Smith”) proposes to transfer three (3) parcels of real estate owned by Smith personally to Newco, LLC, a New Hampshire single member LLC, which is owned by Holdco, LLC, a single member LLC, which in turn is owned by the Smith Revocable Trust, in which Petitioner is the sole grantor and trustee.

Petitioner alleges that the purpose of the transaction is to: (1) establish limited liability protections with respect to the real property asset currently held in Petitioner’s name personally; (2) streamline Petitioner’s business operations by holding all of Petitioner’s income producing properties under one single member LLC which would allow for simpler property management, accounting and insurance; and (3) to allow for package refinancing of all properties under one loan.

The three properties proposed to be transferred by Petitioner to Newco, LLC are:

1. 123 Jane Doe Street, Grover’s Corners, New Hampshire
2. 456 Jon Doe Street, Grover’s Corners, New Hampshire
3. 789 Joe Doe Street, Grover’s Corners, New Hampshire

(together, the “Properties”).

Petitioner represents that the structure of Newco, LLC was done for estate planning purposes and Petitioner is “deemed” the “owner” of Newco LLC. Petitioner also represents that the IRS deems Newco LLC, Holdco LLC and Smith Revocable Trust all to be disregarded entities with all profit and loss passing through the three entities to Petitioner, personally. According to Petitioner, all three entities (Newco, LLC, Holdco, LLC and the Smith Revocable Trust) do not file federal tax returns because all reporting is done via Petitioner’s personal federal tax return. In other words, Petitioner alleges that Petitioner is deemed the owner of the three entities at issue in this Petition.

DETERMINATION REQUESTED BY THE PETITIONER

The Petitioner requests a determination by the Department that pursuant to RSA 78-B:2, XXII, no Real Estate Transfer Tax (RETT) will be due in connection with the transfers of title described above from Petitioner to Newco LLC.

REVISED STATUTES ANNOTATED AT ISSUE

RSA 78-B:2, XXII.

OTHER LAWS OR RULES

N.H. Code of Admin. Rules, Rev 209.01.

N.H. Code of Admin. Rules, Rev 209.02.

PETITIONER’S REPRESENTATIONS

To the best of the Petitioner’s knowledge, the issue and particular circumstances which are the subject of this petition:

- a. Are not under examination by the Department;
- b. Have not been examined by the Department;
- c. Are not under consideration by the Department in connection with a return of a prior period; and
- d. Are not pending in litigation.

DISCUSSION

A. APPLICABLE LAW.

Pursuant to RSA 78-B:1, I(a), the RETT is,

A tax...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.

“Sale, granting and transfer” is defined in part as “every contractual transfer of real estate, or any interest in real estate from a person or entity to another person or entity, whether or not either person or entity is controlled directly or indirectly by the other person or entity in the transfer.” RSA 78-B:1-a, V.

A contractual transfer is a “bargained-for exchange of all transfers of real estate or an interest therein.” RSA 78-B:1-a, II. The term “bargained-for exchange” as used in RSA 78-B:1-a, II, is an element of consideration, which is defined as “money, or other property and services, or property or services valued in money” for an interest in real estate. RSA 78-B:1-a, IV. *See First Berkshire Bus. Tr. v. Commissioner*, 161 N.H. 176, 181 (2010).

Under RSA 78-B:2, XXII, a real estate transaction is exempt from RETT if there is a:

...transfer of title from the owners of an entity to the entity, or from the entity to the owners of the entity; provided that:

(a) no consideration is exchanged for the transfer of the real estate; and

(b) the direct or indirect owners of the parties to the transfer remain the same before and after the transfer of the real estate, the respective ownership percentages of each are identical, and the combined assets and liabilities of the transferor and transferee remain the same except with respect to the real estate.

B. ANALYSIS OF THE EXEMPTION.

Here, Petitioner represents that Petitioner presently holds the Properties in Petitioner’s own name. Petitioner proposes to transfer all three Properties to Newco, LLC, of which, based solely on the representations in the Petition and without making any inquiry or determination on the matter, Petitioner is the sole indirect owner.

According to the Purchase and Sale Agreement between Petitioner and Newco, LLC for the transfer of the Properties submitted with the Petition, there is no consideration exchanged between the parties. Thus, based solely upon Petitioner’s representations and without making an inquiry into this issue, we assume the proposed real estate transfer from Petitioner to Newco, LLC is for no consideration and is a transfer of title from Petitioner to an LLC entity that Petitioner indirectly solely owns. These transfers satisfy both of the criteria for an exemption from RETT under RSA 78-B:2, XXII.

RULING

Based on the facts represented by the Petitioner, as well as the statutory and regulatory provisions discussed herein, the Department makes the following ruling:

The proposed transfers of real estate from Petitioner to Newco, LLC are exempt from RETT under RSA 78-B:2, XXII.

Commissioner

Date