

**THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE ADMINISTRATION**

**IN THE MATTER OF THE PETITION OF
ABC, LLC**

**FOR A DECLARATORY RULING
Document # 8771**

Pursuant to RSA 541-A:1, V; 541-A:9, I(f) and Rev 209.01 et seq., ABC, LLC (the “Petitioner”), by and through the sole member of the Petitioner, petitioned the Department of Revenue Administration with respect to the applicability of the New Hampshire Real Estate Transfer Tax, RSA 78-B, to a proposed transaction.

DETERMINATION REQUESTED BY THE PETITIONER

Under a proposed transaction, the Petitioner, a Massachusetts limited liability company (“LLC”) would transfer parcels from the Petitioner to a New Hampshire LLC, DEF, of which the sole member is the also sole member of ABC. The Petitioner has requested a determination from the Department that the transfer form ABC, LLC, to DEF, LLC:

- (a) Will be determined to be a non-contractual transfer pursuant to RSA 78-B:2(IX);
or
- (b) Will be determined to be exempt from the Real Estate Transfer Tax as a corrective instrument under RSA 78-B:2(V).

FACTS PRESENTED BY THE PETITIONERS

The petitioner made the following representations of relevant facts:

In 2002, the Petitioner acquired parcels of real estate in the name of ABC, LLC, that was referenced in the deed as a Massachusetts limited liability company. In 2004, the Petitioner acquired another parcel of real estate in the name of ABC, LLC, which was again referenced in the deed as a Massachusetts limited liability company. Subsequent to the recording of the deeds, sole member contacted the attorney that represented him in the transactions to inform him of his belief that ABC, LLC, was, in fact, a New Hampshire LLC and not a Massachusetts LLC. It was the sole member’s belief that the reference to ABC as a Massachusetts LLC was a clerical error.

In fact, after further research, it was determined ABC, LLC, was, in fact, a Massachusetts LLC and that it was not created as a New Hampshire LLC. It is the sole member's desire to transfer the parcels held by ABC, LLC to DEF, LLC, a New Hampshire LLC that was created in 2005, well after the acquisition of the parcels in 2002 and 2004. There will be no money exchanged in connection with the transfer. If a corrective deed is feasible, ABC, LLC, will be abolished. It was the sole member's intention to transfer all business interests to New Hampshire and to let any and all Massachusetts business entities terminate.

REVISED STATUTES ANNOTATED [RSA] AT ISSUE

RSA 78-B:1, I(a);
RSA 78-B:1-a, II;
RSA 78-B:1-a,V; and,
RSA 78-B:2, V.

RULES AT ISSUE

N.H. Code Admin. R. Rev 802.01(a); and,
N.H. Code Admin. R. Rev 802.06.

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, I(a) imposes a tax upon the sale, granting and transfer of real estate and any interest therein including transfers by operation of law. There is a presumption under the statute that every transfer is taxable unless it is specifically exempt from taxation under the exceptions provided in the statute. N.H. Admin R. Rev 802.01(a). Moreover, the Department has promulgated a rule governing transfers between entities owned or controlled by the same individuals. See N.H. Admin R. Rev 802.06. In the case of such transfers, the Department will presume that the taxable consideration of the transfer will be the fair market value of the real estate transferred. *Id.* Therefore, unless the transfer qualifies for an exemption from the tax, the transfer will be taxable and the amount of the tax will be based upon the fair market value of the real estate to be transferred. RSA 78-B:2 provides the exemptions authorized by the legislature.

The central issue raised by the Petitioner's request is whether the proposed deeds to transfer the parcels from a Massachusetts LLC to a New Hampshire LLC owned by the same owner would qualify as a corrective deed under RSA 78-B:2, V.

RSA 78-B:2. The tax imposed by this chapter shall not apply:

V. To a deed or other instrument which corrects a deed or other instrument previously given.

The transaction proposed by the Petitioner is not the execution of a deed to correct a deed previously given. A corrective deed that would qualify for the exemption is a deed that actually corrects an error in the description of the parties or the premises in the original deed. There is no allegation that there was an error that occurred in the description of the parties or the premises in the original deeds. The original deeds did not contain errors that caused the real estate to be transferred to a party that was not intended by the grantor. This could not have been the case because the grantee under the proposed deed, DEF, LLC, did not exist at the time of the execution of the original deeds in 2002 and 2004. Rather, the proposed transaction is designed to transfer the real estate owned by a Massachusetts LLC to a New Hampshire LLC to effectuate the sole member's intentions to hold the properties in a New Hampshire LLC.

RULINGS

Based on the facts as represented by the Petitioner and the statutory and administrative rule provisions discussed above, the department rules that the proposed deed from a Massachusetts LLC to a New Hampshire LLC will result in a transfer that is subject to the real estate transfer tax. The amount of the consideration will be presumed to be the fair market value of the real estate. N.H. Code Admin. R. Rev 802.06. Application of this ruling to any other situation is not binding on the Department.

Date

G. Philip Blatsos
Commissioner