

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

**IN THE MATTER OF THE PETITION OF**

**Several Trustees of the Trusts Comprising  
Irrevocable Trust “A” and Trust “B”**

**FOR A DECLARATORY RULING**

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*Pursuant to RSA 541-A:1, IV, and RSA 541-A:16, II(b) and administrative rule Rev 209.01, the Petitioners request a declaratory ruling concerning the applicability of New Hampshire’s real estate transfer tax to the proposed consolidation of two trusts.*

*Pursuant to N.H. Code of Admin. Rules Rev 209.02, this declaratory ruling is issued to the Petitioners, Trustees of several trusts comprising of Irrevocable Trust “A” and Trust “B”(Non-Exempt Trust), with respect to the particular circumstances and facts discussed herein and represents a holding of the department on those circumstances and facts for those Petitioners only.*

**Facts Presented by the Petitioners**

Petitioners are a group of Trustees representing several of the trusts constituting the Irrevocable Trust “A” and Trust “B”(Non-Exempt Trust). Trust “A” and Trust “B” are each comprised of six separate and distinct trusts. Petitioners request a ruling that there would be no real estate transfer tax consequences to either Trust “A” or Trust “B” upon completion of a proposed consolidation of Trust “A” into Trust “B”. Petitioners represent that the consolidation would reduce administrative costs including accounting to beneficiaries, federal and state tax return preparation and filings, and legal and out-of-pocket costs associated with acquiring and disposing of investment properties. They further represent that the consolidation would benefit the beneficiaries by providing the ability to deal with one set of fiduciaries and less complicated estate planning.

The Trust “A” owns a 45% undivided interest in certain land and buildings. Trust “B” owns real estate, undivided fractional interests in real estate, and fractional interests in several entities which own interest in New Hampshire real estate.

Under the proposed consolidation, the Trustees of the six separate and distinct trusts under Trust “A” would deed their respective interests in the land and buildings to the Trustees of the corresponding six separate and distinct trusts under Trust “B”.

## **Determination Requested by the Petitioners**

Petitioners request a ruling finding “that there would be no real estate transfer tax consequences to either Trust “A” or Trust “B” upon consummation of the proposed consolidation of Trust “A” into Trust “B”.” They seek this ruling based on the following rationale:

1. The proposed consolidation would not fall under the definition of a contractual transfer because there would be no bargained-for exchange. The assets of Trust “A” would simply become assets of Trust “B”. The deed would be executed simply for the purpose of showing the correct title to the undivided interests in the real estate after the consolidation. No beneficial interest would be changed or affected in any way.
2. The proposed consolidation would not fall under the definition of a sale, grant or transfer because it would not be a contractual transfer.
3. Even if the proposed consolidation were to be considered a sale, grant or transfer, there would be no tax other than the minimum tax because the actual price or consideration for the consolidation would be none.

## **Revised Statutes Annotated (RSA) at Issue**

The following New Hampshire statutes are relevant to the Petitioners’ request for a declaratory ruling:

RSA 77-A:1, I      RSA 78-B:1, I(a)      RSA 78-B:1-a, II, IV, V, VI  
RSA 78-B:2      RSA 78-B:9

## **Administrative Rules at Issue ( N.H. Code of Admin. Rules)**

Rev 802.01(a)      Rev 802.06      Rev 802.05      Rev 805.01

## **Petitioners’ Representations**

To the best of the Petitioners’ knowledge, the issues that 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**

Trust “A” holds a 45% interest in a commercial property, which is divided among the six sub-trusts. Trust “B” holds real property, fractional undivided interests in real property, and

interests in several entities, which own interests in New Hampshire real estate. Trust “B” is also comprised of six sub-trusts. Given the commercial nature of their holdings, Trust “A” and Trust “B” appear to be business organizations, as that term is defined in RSA 77-A:1, I. The beneficiaries of the six sub-trusts comprising Trust “A” are also the beneficiaries of the six sub-trusts comprising Trust “B”. The management of the various sub-trusts is vested in a variety of trustees. The merger of the two umbrella trusts is intended to stream-line this management function. Presumably, this consolidation will also effectively focus the beneficial control group of the resulting trust entity.

Petitioners posit that the transaction should be exempt because there has been no bargained-for exchange, and therefore, the transfer is not contractual. A bargain is nothing more than an agreement between parties for the exchange of promises or performances. Nothing in the statute requires that the bargaining be done at arms-length or for value. In fact, the statute and the rules anticipate that there will be transfers between related parties, and these transfers are contractual. See, RSA 78-B:1-a, II. Further, the statute and the rules provide mechanisms for determining value or consideration, where such cannot be determined on the face of the transaction. See, RSA 78-B:1-a, IV; RSA 78-B:1-a, V; RSA 78-B:9; N.H. Code of Admin Rules, Rev 802.06 and Rev 805.01. Nothing in the statute suggests that bargaining between related parties in anyway undermines the existence of a contractual transfer. Here, presumably some, or all, of the beneficiaries and the trustees of Trust “A” and the Trust “B”, and some, or all, of the related sub-trusts have come together and agreed that it is in their best interests to merge the two trusts – exchanging separate management and operation for consolidated management and operation. This is a bargained-for exchange.

Petitioners describe the proposed transaction as a consolidation or merger of two trusts, which appear to be real estate holding companies, as defined in RSA 78-B:1-a, VI. 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.

“Sale, granting and transfer” means every contractual transfer of real estate, or an 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. Transfers of interest in real estate holding companies holding real estate or holding interests in real estate, transfer of which would be taxable under this chapter if transferred directly, shall be taxable as transfers under this chapter to the extent of the fair market value of the real estate. Transfers of interests in an entity that holds, either directly or indirectly, an interest in a real estate holding company shall be considered to be a transfer of an interest in the real estate holding company to the extent of the ownership interest of the entity in the real estate holding company.

RSA 78-B:1-a, V. A real estate holding company is defined as a business organization “which is engaged principally in the business of owning, holding, selling, or leasing real estate and which owns real estate or an interest in real estate within the state.” RSA 78-B:1-a, VI.

There is a presumption under the statute that every transfer is taxable unless it specifically exempt from taxation under the exceptions provided in the statute. N.H. Code of Admin. Rules, Rev 802.01(a). Moreover, the Department has promulgated a rule governing transfers between entities owned or controlled the same individuals. See N.H. Code of Admin. Rules, Rev 802.06. Here, the beneficial interest owners of the six sub-trusts remain the same even though the legal title owners change. In the case of such transfers, the Department will presume that the taxable consideration of the transfer will be based upon the fair market value of the real estate to be transferred. N.H. Code of Admin. Rules, Rev 802.05 and 805.01 (governing the calculation of consideration for transfers of real estate holding companies). Unless the transfer qualifies for an exemption from the tax, the transfer will 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.

Petitioners' also suggest that the transaction is exempt because under the consolidation plan the "assets of Trust "A" would simply become the assets of Trust "B"" and that the deed would be executed "simply for the purpose of showing the correct title to the undivided interests in the real estate after the consolidation." The transaction proposed by the Petitioners is not the execution of a corrective deed. See RSA 78-B:2, V (exempts corrective deeds from the real estate transfer tax). A 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 that there is an error in the description of the parties or the premises in the original deed. The original deed did not contain errors that caused the real estate to be transferred to a party that was not intended by the grantor. Rather, the proposed transaction is designed to transfer real estate held by Trust "A" to Trust "B".

### **Ruling**

Based on the facts presented by the Petitioner and the statutory provisions and administrative provisions discussed above, the Department rules that the proposed consolidation of Trust "A" into the Trust "B" will result in a transfer that is subject to real estate transfer tax. The amount of consideration will be presumed to be the fair market value of the real estate. N.H. Code of Admin. Rules, Rev 802.06 and 805.01. Application of this ruling to any other situation is not binding on the Department.

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Date

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G. Philip Blatsos,  
Commissioner