

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

IN THE MATTER OF THE PETITION OF

ABC Realty Trust

FOR A DECLARATORY RULING

REDACTED RULING

Document #10566 Effective 4-8-2014

Pursuant to RSA 541-A:1, IV and RSA 541-A:16, II(b) and N.H. Code of Admin. Rules Rev 209.01, the Petitioner requests a declaratory ruling with respect to real estate transfer tax.

Pursuant to N.H. Code of Admin. 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 department on those circumstances and facts for Petitioner only.

FACTS PRESENTED BY THE PETITIONER

In 1969, ABC Realty Trust was formed as a Massachusetts Business Trust to hold a single piece of real estate located in New Hampshire. The sole beneficiary of the trust is XYZ Limited Partnership. QRS, Inc. is the General Partner of XYZ Limited Partnership, with a one percent (1%) ownership interest. John Doe, Jane Doe and the James Doe 1982 Revocable Trust are the Limited Partners of XYZ Limited Partnership and collectively hold the remaining ninety-nine percent (99%) ownership interest.

The Trustee of ABC Realty Trust seeks to convert the entity to a New Hampshire limited liability company, New, LLC, via statutory conversion pursuant to RSA 304-C:147 through 149, in accordance with the following representations:

1. Following conversion, XYZ Limited Partnership will hold all of the membership interest in New, LLC.
2. XYZ Limited Partnership will receive no consideration other than the membership interest in New, LLC post conversion.
3. The fair market value of the asset held by ABC Realty Trust will be the fair market value of the asset owned by New, LLC.
4. Under RSA 304-C:147, ABC Realty Trust remains the same business entity after the statutory conversion as it was before.

In addition to making the above representations, the Petitioner has submitted all of the statutory conversion documentation that will be executed to effectuate the conversion.

DETERMINATION REQUESTED BY THE PETITIONER

Petitioner requests the following ruling:

1. The conversion of ABC Realty Trust, a Massachusetts Business Trust, to New, LLC, a New Hampshire LLC, under the provisions of RSA 304-C:147 through 149, shall not create a taxable transfer of the real estate owned by ABC Realty Trust for purposes of the real estate transfer tax.

REVISED STATUTES ANNOTATED (RSA) AT ISSUE

The following New Hampshire statutes are relevant to the Petitioner's request for a declaratory ruling:

RSA 78-B:1, I (2013)
RSA 78-B:1-a, II, IV, V and VI (2013)
RSA 304-C:147 (2013)
RSA 304-C:148 (2013)
RSA 304-C:149 (2013)

OTHER LAWS OR RULES

N.H. Code of Admin. Rules Rev 802.01
N.H. Code of Admin. Rules Rev 802.05

PETITIONER'S REPRESENTATIONS

To the best of the Petitioner's 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

A. Real Estate Transfer Tax

Pursuant to RSA 78-B:1, I (a), the Real Estate Transfer Tax ("RETT") is "[a] tax...imposed upon the sale, granting and transfer of real estate and any interest therein including transfers by operation of law." "Sale, granting and transfer" is defined 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." See RSA 78-B:1-a, V (2013). "Contractual transfer" is defined as "a bargained-for exchange of all transfers of real estate or an interest therein..." See RSA 78-B:1-a, II. There is no statutory definition for "a bargained-for exchange." However, the New Hampshire Supreme Court has held that "a bargained-for exchange is an element of 'consideration.'" See *First Berkshire Bus. Trust v. Comm'r, N.H. Dep't of Revenue Admin.*, 161 N.H. 176, 180-181 (2010). RSA 78-B:1-a, IV defines "consideration" as "the amount of money, or other property and services, or property or services valued in money which is given in exchange for real estate, and measured at a time immediately after the transfer of the real estate." While *First Berkshire* only addresses the first portion of the definition of "consideration," the remaining portion of the definition is not necessary for this analysis.

The Petitioner represents that the beneficiary of ABC Realty Trust will have an identical interest in New, LLC as currently exists in ABC Realty Trust. The Petitioner further represents that the beneficiary of ABC Realty Trust will receive no consideration other than the membership interest in New,

LLC. Finally, the Petitioner represents that the fair market value of the assets held by ABC Realty Trust will be the fair market value of the assets held by New, LLC. The analysis of whether the Petitioner will owe RETT as a result of the statutory conversion has two parts.

The first part of the analysis is whether the statutory conversion is a “contractual transfer,” which is a “bargained-for exchange of real estate.” As provided in *First Berkshire*, “a bargained-for exchange is an element of ‘consideration.’” Consideration means “the amount of money, or other property and services, or property or services valued in money which is given in exchange for real estate, and measured at a time immediately after the transfer of the real estate.” Here, the Petitioner’s mechanism for conducting the statutory conversion will result in no exchange of money, or other property and services, etc. Rather, the Petitioner represents that no consideration will be received for the membership interest exchanged. Accordingly, there is no consideration in the Petitioner’s interest exchange.

The second part of the analysis is whether the transfer of real estate is from one entity to another entity, as required in the definition of a “sale, granting or transfer.” The statutory conversion provisions specifically state that “[a] statutory conversion is a procedure (I) which involves only a single business entity; and (II) under which the converting business entity, as defined in RSA 304-C:148, II: (a) converts its business organization form to a different business organization form; but (b) remains the same business entity after the business conversion as before.” See RSA 304-C:147 (2013). Accordingly, the transfer of real estate is not a transfer at all, but rather a statutory conversion that involves only a single business entity. Therefore, the Petitioner’s interest exchange is not subject to RETT.

RULINGS

Based on the facts represented by Petitioner, and the regulatory provisions discussed above, the Department makes the following rulings:

1. The Petitioner has no RETT liability as a result of the conversion of ABC Realty Trust, a Massachusetts Business Trust, to New, LLC, a New Hampshire LLC, under the provisions of RSA 304-C:147 through 149.

Date

John T. Beardmore, Commissioner