

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

IN THE MATTER OF THE PETITION OF

DEF Associates

FOR A DECLARATORY RULING

REDACTED DOCUMENT

Document #12434 Effective 12-12-2017

Pursuant to RSA 541-A:1, V 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 the Petitioner only.

FACTS PRESENTED BY THE PETITIONER

DEF Associates (“Petitioner”) was organized as a New Hampshire general partnership at first between certain individuals. However, at the time of the petition, because the partners gifted and otherwise transferred their partnership interests over the years, the Petitioner consisted of other and additional partners holding different ownership percentages.

The Petitioner intends to convert the Petitioner’s form of organization from a general partnership to a limited liability company (“Converted LLC”) pursuant to RSA 304-A:56 and 58, and RSA 304-C:147-149. The Petitioner represents that, in accordance with that procedure, after the statutory conversion takes effect, the Converted LLC will be the same business entity that existed before the statutory conversion. Specifically, the Petitioner represents that the Petitioner’s assets, liabilities, and owners, and the owners’ respective ownership percentages immediately before the statutory conversion will be identical to those of the Converted LLC immediately after the statutory conversion.

The Petitioner also intends for the estate of Partner 1, a former partner, now deceased, to transfer real estate located in New Hampshire (“NH Property”) to the Converted LLC pursuant to the statutory conversion. The Petitioner represents that the Petitioner owns the NH Property, not Partner 1 or his estate, and that the NH Property is only held in his name as nominee and agent for the Petitioner, for the Petitioner’s business purposes. The Petitioner exercises the rights and obligations incident to ownership of the NH Property, and the profits, expenses, and losses from the NH Property are shared by the partners in proportion to their respective ownership percentages.

The Petitioner also represents that no consideration will be given in exchange for the transfer of title pursuant to the statutory conversion, including the transfer of the NH Property.

DETERMINATIONS REQUESTED BY THE PETITIONER

Petitioner requests the following ruling:

1. The Petitioner's statutory conversion from a general partnership to a limited liability company pursuant to RSA 304-A:56 and 58, and RSA 304-C:147-149, as described above, will not give rise to a taxable transfer of real estate for purposes of the Real Estate Transfer Tax.
2. The Petitioner's transfer of the NH Property from the estate of Partner 1 to the Converted LLC pursuant to the statutory conversion, as described above, will not give rise to a taxable transfer of real estate 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 (1999)
RSA 78-B:2 (2016)

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 issues that are the subject of the 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

RSA 78-B:1, I(a) provides, in pertinent part: "[The Real Estate Transfer Tax ("RETT")] is imposed upon the sale, granting and transfer of real estate and any interest therein including transfers by operation of law." Additionally, under RSA 78-B:1, I(a), "[e]ach 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."

The relevant exemption here is RSA 78-B:2, XXI, concerning conversions of business organization forms. Specifically, under RSA 78-B:2, XXI(a), the RETT does not apply to a transfer of title provided that:

- (1) The transfer of title, where no consideration is exchanged, is coincidental to a change in the transferor's form of organization to that of the transferee;
- (2) As a result of the change in the transferor's form of organization, the assets and liabilities of the transferor immediately preceding the change in form of organization and the assets and liabilities of the transferee immediately following the change in form of organization are the same; and
- (3) At the time of the transfer of title, the owner or owners of the transferor and the owner or owners of the transferee, and the respective ownership percentages of each, are identical.

The Petitioner represents that it will change to the Converted LLC, and that, in accordance with the procedure in RSA 304-A:56 and 58, and RSA 304-C:147-149, the Petitioner's assets, liabilities, owners, and the owners' respective ownership percentages immediately before the statutory conversion will be identical to those of the Converted LLC immediately after the statutory conversion. The Petitioner also represents that although the NH Property is held in the name of Partner 1, the Petitioner owns the NH Property, and that no consideration will be given in exchange for the transfer of title pursuant to the statutory conversion, including the transfer of the NH Property.

Assuming the facts as represented by the Petitioner (including that the Petitioner owns the NH Property),¹ after the statutory conversion takes effect, the Converted LLC will be vested by operation of law with title to all the Petitioner's assets, including the NH Property. This transfer of title pursuant to the statutory conversion, from the Petitioner to the Converted LLC, including the transfer of the NH Property, "is coincidental to a change in the transferor's form of organization to that of the transferee," and otherwise satisfies the requirements of RSA 78-B:2, XXI.

Accordingly, the transfer of title pursuant to the Petitioner's statutory conversion, including the transfer of the NH Property, is not subject to the RETT.

RULING

Based on the facts represented by the Petitioner, and the statutory provisions discussed above, the department makes the following ruling:

The Petitioner's statutory conversion from a general partnership to a limited liability company will not give rise to a taxable transfer of real estate subject to the RETT, because the corresponding transfer of title, including the transfer of the NH Property (assuming the Petitioner owns the NH Property), is exempt pursuant to RSA 78-B:2, XXI.

Date

Lindsey M. Stepp, Assistant Commissioner

¹ For purposes of this declaratory ruling, the department assumes without deciding that the Petitioner holds title to the NH Property, and that the transfer of the NH Property will be a legal, valid, and effective transfer to the Converted LLC.