

August 3, 2005

[name]  
[address]  
[city, state, zip code]

FORMAL RULING 2005 - 01  
Re: [nonprofit corporation]

Dear Roger:

You have requested a ruling as to the Vermont land gains tax implications of a proposed sale by [nonprofit corporation] of all or substantially all of its interest in [LLC], a limited liability company. This ruling relies on your representations contained in your letter of April 7, 2005.

#### **FACTS**

[business] consists of approximately 700 acres of land in or partially in the town of [town] with [several buildings and facilities]. Before 2000, it was owned and operated by [previous owner].

[nonprofit corporation], a Vermont nonprofit corporation, is the single member of [LLC], a limited liability company formed in 2000 to acquire the [business] from the bankrupt [previous owner]. [LLC] owns 100% of the stock of [subsidiary], a subsidiary it formed to operate the [business]. [subsidiary] has wholly-owned subsidiaries – [subsidiaryA], [subsidiaryB], and [subsidiaryC] – that are responsible for components of the operation of the [business]. Through these subsidiaries, [LLC] has operated the [business] since it was acquired.

During its four-plus years of ownership, [LLC] has sold some minor parcels to owners of abutting land and has sold certain condominium development rights to a local developer.

A sale is contemplated to the [buyer]. [buyer] is an unrelated party that has experience developing [this type of] property. Two alternative possible structures are contemplated. Under the first alternative [buyer] would acquire 95% of [LLC], with [nonprofit corporation] retaining a 5% minority interest. [buyer] would make a commitment to the

continued development and improvement of the [property and facilities] and [nonprofit corporation] would retain certain [use] rights needed for its athletic mission.

In the alternative scenario, [buyer] would acquire 100% of [LLC]. Provisions of the sale would include the commitment to develop the [type of use] assets and the retained [use] rights for the [nonprofit corporation] as well a contingent purchase price provision allowing the [nonprofit corporation] to participate in certain future revenues.

### **ISSUE**

1. Whether the sale of the interest in [LLC], under either scenario, would be a “sale or exchange of land” for purposes of Chapter 236 of 32 V.S.A. (land gains tax).
2. Whether [LLC]’s holding period and adjusted basis will be affected by either contemplated transaction.

### **DISCUSSION**

Sale or Exchange.

The tax is imposed on the gain from the “sale or exchange of land”. 32 V.S.A. § 10001. “Sale or exchange of land” is defined at § 10004. In addition to transfers of title to land (§ 10004(a)) the section brings into the definition certain contracts for future transfers of title (§ 10004(b)), and “[a]ny sale or exchange of shares in a corporation or other entity, or of comparable rights or property interests in any other form of organization or legal entity, which effectively entitles the purchaser to the use or occupancy of land...” (§ 10004(c)).

The provisions of subsection (c) prevent an exchange from being structured through an entity to avoid the tax. The Department has not interpreted this section to require tax when an interest in an operating business is sold if the circumstances of the sale identify a purpose of selling a business rather than a transfer of land. See, for example, Formal Ruling 97-09 and Formal Ruling 83-2.

The transactions contemplated with [LLC] will result in the company continuing to hold title to the land in question and continuing to run its historic business on that land. The Department will not consider either alternative to be a “sale or exchange of land” under the provisions of § 10004(c).

Treasury Regulation 301.7701-2, providing for a single member limited liability company to be treated as a division of its member, does not change this analysis. Title to the land remains with [LLC]. The land gains tax statute does not refer to the Internal Revenue Code for the definition of sale or exchange.

Basis and Holding Period.

The land gain tax does adopt the provisions of the Internal Revenue Code for determining basis, gain and holding period. § 10005(a). For the purpose of any subsequent sale by [LLC], however, the code should be applied as though the LLC was not a disregarded

entity. The original basis and holding period in the hands of [LLC] will continue even if its membership changes as contemplated in either of the alternative proposed transactions.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of the ruling showing the proposed deletion is attached, and you may request within (30) days that the Commissioner delete any further information which might tend to identify the interested parties. The final discretion as to deletions, however, remains with the Commissioner.

This ruling is issued solely to [nonprofit corporation] and [LLC] and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

3 V.S.A. Section 808 provides that this ruling will have the same status as an agency decision or order in a contested case. You have the right to appeal this ruling within thirty (30) days.

Sincerely,

George H. Phillips  
Policy Analyst

Approved this \_\_\_\_\_ day of August 2005

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Tom Pelham  
Commissioner of Taxes