

Ruling 94-12

Vermont Department of Taxes

Date: December 22, 1994

Written By: Mary L. Bachman, General Counsel

Approved By: Betsy Anderson, Commissioner of Taxes

You have requested a formal ruling on the application of the Vermont property transfer tax. This ruling relies on your letters of October 31, 1994 and November 30, 1994 and on our telephone conversation of November 21, 1994.

Facts: [Partnership], a [name of state] General Partnership was formed a number of years ago with one of its purposes being to acquire and lease nursing homes to [corporation], a [state] for profit, general business corporation whose principal function is to operate nursing homes. This is a family business and the stockholders of the corporation are the three partners of [the partnership].

For purposes of reducing accounting and record keeping burdens and generally for administrative ease, your clients are considering eliminating the partnership and having the corporation own the real estate as well as operate the nursing homes.

Your clients' accountants have suggested using an interim holding company in order to avoid Vermont property transfer tax on the transfer of the real estate. Specifically, an interim [state] real estate holding company called [name of holding company] will be formed in [state] and the partners, after receiving a pro rata liquidating distribution of the partnership assets and liabilities, will contribute those assets and liabilities to the new holding company. The holding company will then merge into [the corporation]. The holding company will be a wholly owned subsidiary of [the corporation] until its merger with the latter on or about January 1, 1995. The partnership will be dissolved as of January 1, 1995.

Ruling: Vermont imposes a tax upon the transfer by deed of title to property located within the state. 32 V.S.A. § 9602. Exemptions from the tax are set forth in 32 V.S.A. § 9703.

(1) Distribution of partnership assets and liabilities to the partners of [partnership]. A transfer made by a partnership to a partner is exempt under 32 V.S.A. § 9603(16) as long as the transfer is made "in connection with a complete dissolution of the partnership, pursuant to which no gain or loss is recognized under the Internal Revenue Code, except where the commissioner finds that a major purpose of such dissolution is to avoid the property transfer tax."

The purpose of the distribution is to allow the partners as opposed to the partnership to contribute the property and thereby eliminate the partnership in the business structure. Therefore, as long as the distribution does not result in recognition of gain or loss under the Internal Revenue Code, no Vermont property transfer tax would be due.

(2) Partner contributions of the Vermont real estate to [the real estate holding company]. The relevant exemption provides as follows: "[t]ransfers made to a corporation at the time of its formation pursuant to which no gain or loss is recognized under section 351 of the Internal Revenue Code, except where the commissioner finds that a major purpose of such transaction is to avoid the property transfer tax;" 32 V.S.A. § 9603(11). Your letter suggests that the formation of the corporation and the contribution of real estate to it will be contemporaneous. Nevertheless, the transfer will not be exempt because the purpose of forming the new holding company is the avoidance of Vermont property transfer tax. After serving as a conduit, [real estate holding company] will be merged into [the corporation] and will cease to exist. There appears to be no independent reason for this intermediate step. The stated goal of eliminating one entity could more easily be accomplished by the partners directly contributing the real estate to the existing corporation.

(3) Merger of [the real estate holding company] with [the corporation] 32 V.S.A. § 9603(9) provides: "Transfers made pursuant to mergers or consolidations of corporations pursuant to which no gain or loss is recognized under the Internal Revenue Code...except when the commissioner finds that a major purpose of such dissolution is to avoid the property transfer tax;"

As a result of this merger, there will be only one corporation remaining. It will own the nursing home facilities and it will operate them. This was the business structure which your clients desired. As long as no gain or loss is recognized under the Internal Revenue Code, no Vermont property transfer tax would be due on this transaction. Whether the transfer of the real estate is accomplished directly from the partners to the existing corporation or through an intermediary holding company, there will be a transfer tax liability.

This ruling is issued solely to your firm 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.