

## ***Ruling 97-09***

Vermont Department of Taxes

Date: December 23, 1997

Written By: George H. Phillips, Tax Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

You have requested a ruling as to whether a contemplated purchase of all outstanding shares of stock of [The Corporation] from its present owner, [Company] by a newly formed partnership or limited liability company ("Purchaser") would affect the holding period for purposes of the Vermont Land Gains Tax of land owned by [Corporation]. The new entity would be formed by your client [the Company] and unrelated investors. Specifically, you have asked whether the sale would establish a new holding period under the provisions of 32 V.S.A. §10004(c), which defines "sale or exchange of land" to include "the sale or exchange of shares in a corporation...which effectively entitles the purchaser to the use or occupancy of the land." This ruling relies on information provided in your letter of October 16, 1997.

[The Corporation] is a Delaware corporation, in the business of real estate development, which has been developing and marketing land in the town of [Town] since the late [year]. The major asset of the corporation is approximately [number] acres of land, acquired approximately [number] years ago, which is the remaining unsold portion of the development. The parties intend for [The Corporation's] land development and sales operations to continue and to be unaffected by the stock purchase. The Company does not intend to make an election under section 338 of the Internal Revenue Code. Absent such election, [The Corporation's] present basis and holding period of the land under the Internal Revenue Code would be unaffected by the stock purchase.

32 V.S.A. §10004(c) is an exception to the general rule that the basis and holding period for purposes of the Land Gains Tax follow the rules of the Internal Revenue Code. The provision is an anti-abuse provision which prevents tax from being avoided by structuring transactions which are effectively land sales as stock transactions. The Department has not historically applied section 10004(c) to sales of controlling interests in active business enterprises. To determine whether a stock transaction "effectively entitles the purchaser to the use or occupancy of land" the entire context of the transaction must be analyzed.

Here, [The Corporation] is an operating corporation, not merely a land-holding company. Purchaser's intent is to continue the operation of [The Corporation's] historical business enterprise, not to take any steps which would be typical of direct use or occupancy of the land.

The contemplated transaction would not effectively entitle Purchaser to the use or occupancy of land. Therefore, 32 V.S.A. §10004(c) does not apply and the holding period of land owned by [The Corporation] for land gains tax purposes would be determined by the Internal Revenue Code.

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.