

[Date]

[Taxpayer Representative]

[Address]

[Address]

RE: Formal Ruling 16-11

Dear [Taxpayer Representative]:

This is a formal ruling for your client, [Taxpayer], formerly known as [Taxpayer], regarding the applicability of property transfer tax to two transactions. This ruling is based upon representations in your letters dated [Date] and [Date], our telephone conversation of [Date], and the pages of the partnership agreement you submitted on [Date].

FACTS

The facts you describe are as follows:

Three individuals took title to a [Property] in their individual names in 1996. Property transfer tax was paid at the time of that transfer. In 1998, these individuals formed a general partnership, [Taxpayer]. In their partnership agreement, they provided, "All partners hereby contribute to the partnership the real estate they own together." The partnership agreement referenced the deed and parcel description for that real estate. They did not execute a deed of this parcel to their partnership. All three signed the partnership agreement, and one person witnessed all three signatures, but the signatures were not acknowledged before a town clerk or notary public. The partnership agreement was not recorded, and no property transfer tax was paid at that time. The individuals have used that parcel in their partnership farm business since the beginning of the partnership in 1998.

After the formation of the general partnership in 1998, and prior to [Date], 2005, the general partnership purchased several parcels of land, and recorded those deeds and paid property transfer tax on those transfers.

On [Date], the general partnership converted to a limited liability partnership (LLP). The certificate of conversion was filed with the Secretary of State on [Date], 2005.

You now intend to execute a deed of the property held in the partners' individual names to their LLP, and another deed of the property held in the general partnership name to the LLP. You have asked whether the property transfer tax will apply to either of these transfers.

DISCUSSION

Neither of the transactions you describe will be subject to property transfer tax.

1. Transfer of general partnership property to LLP

There will not be an actual conveyance of property from the general partnership to the LLP. The property involved was originally conveyed by deed to the general partnership, and with the conversion to the LLP, the property "remained vested" in the LLP. All that is required now is a change of name of the owner of record. You should simply record the certificate of LLP conversion with the appropriate town clerk. The property transfer tax does not apply to recording a name change.

Under the partnership laws in Title 11, a partnership may convert to a limited partnership. 11 V.S.A. § 3282(a). A partnership which has been converted "is for all purposes the same entity that existed before the conversion." 11 V.S.A. §§ 3284(a), 3211(b). Once a conversion takes effect, "all property owned by the converting partnership . . . remains vested in the converted entity." 11 V.S.A. §§ 3284(b)(1). The conversion requires the execution of a certificate of limited partnership. 11 V.S.A. § 3282(c).

As of the conversion, [Taxpayer] owns all of the general partnership property. For purposes of the land records, you should record the certificate of conversion to a limited partnership, evidencing the name change of the entity. 27 V.S.A. § 350. The recording of the certificate will not be subject to the transfer tax, because it is not a deed or other writing evidencing a transfer of title. 32 V.S.A. § 9601(1).

2. Deed from individuals to their LLP

This deed will be a conveyance from the individuals to the LLP. The individuals did not convey title to this property to their general partnership, and therefore the LLP also does not have title to the parcel.

You note that Vermont's partnership laws set forth several rules for determining when property is partnership property. Subsection 3214(d), set out below, provides that property acquired in the individual names of the partners, with no indication in that deed of the existence of the partnership, is presumed to be the separate property of the individuals:

§ 3214. When property is partnership property

- (a) Property is partnership property if acquired in the name of:
 - (1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

11 V.S.A. § 3214, enacted by Sec. 1 of No. 149 of the Acts of the General Assembly of 1998 (Adj.Sess.), effective January 1, 1999.

In your case, the property was originally acquired by the individuals in their own names, with no indication of the partnership. However, the general partnership did not exist at the time the individuals took title to the property. For that reason, Section 3214 simply does not apply to this situation. If it did apply, then under Subsection 3214(d), above, the property would be presumed to be separate property, even if used for partnership purposes.¹

The individuals did provide in the general partnership agreement that they “hereby contribute” their real estate to their partnership. That agreement was insufficient to convey title to the partnership, because, among other things, it was not acknowledged before a town clerk or notary public as required by law. 27 V.S.A. § 341; Lakeview Farm, Inc. v. Enman, 166 Vt. 158, 164, (1997) (“A deed that is improperly witnessed and acknowledged is invalid.”).

The partnership agreement was defective as a deed, but is sufficient to be viewed as a contract to convey the specific parcel to the partnership. Kissell v. Kissell, 131 Vt. 77, 81 (1973) (“[A] defective deed can be treated and construed as a contract to convey land.”).

¹ Section 3214 is identical to Section 204 of the Uniform Partnership Act. The Official Comments to that section provide that when one or more partners purchase property with no indication in the deed of the partnership, and the property is used for partnership purposes, “In effect, it is presumed in that case that only the *use* of the property is contributed to the partnership.” Revised Uniform Partnership Act, Chapter 2, Article 2, § 204, Official Comments (3) (2015-2016 Ed.) (emphasis added).

A contract to convey real property may be recorded and the property transfer tax paid at that time. If it is recorded and the tax paid, then “the later recording of the deed” required by that contract “shall not be subject to the transfer tax.” 32 V.S.A. § 9605(b).

The original partnership agreement was a contract to convey made at the time of formation with no gain or loss on the transaction. The individuals may now record that contract, and the recording will be exempt from property transfer tax, because the contract took effect at the time of formation of their partnership. 32 V.S.A. §§ 9601(1); 9603((15). The individuals may then execute a deed to the LLP, which will unite their legal title with the LLP’s equitable title. Recording this deed will be exempt from the property transfer tax, because it is “the later recording of the deed” required by the contract. 32 V.S.A. § 9605(b). The recording of the certificate of conversion to a limited partnership under 27 V.S.A. § 350, described above, will be evidence that the partnership in the contract to convey is the same partnership as the LLP in the deed.

GENERAL PROVISIONS

Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations.

Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to see 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 statutes or regulations.

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

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date