

Realty Transfer Tax: Taxation of Transfers of Ownership Interests

This notice clarifies the City of Philadelphia, Department of Revenue's position on the imposition of the Realty Transfer tax on transfers of ownership interest in real estate holding companies. It addresses the question of whether the City is following the Information Notice 2014-01 issued by the Commonwealth of Pennsylvania on October 17, 2014.

The City does not follow Example #3 on page 4 of the information Notice 2014-01. It is the City's position that transfers in separate tiers of tiered holding companies must be combined to determine if the transfers result in a 90% or more transfer of the real property interest and that the tax is due on the entire value of the real property held.

A corporation or association may be a real estate company (even if it does not own real estate) (i) by virtue of its direct ownership interest in a real company and/or (ii) by its indirect ownership in a real estate company through a tiered structure.

A corporation or association is a real estate company, if:

- 1) Ninety percent or more of the ownership interest in the corporation or association is held by thirty-five or fewer persons, and
- 2) The corporation or association owns, as ninety per cent or more of the fair market value of its assets, a direct or indirect interest in a real estate company.

The tax is imposed when a real estate company becomes acquired. This occurs upon a change in its ownership, however effected, that does not affect the continuity of the company, and of itself or together with prior changes, has the effect of transferring 90% or more of the total ownership interest in the company within a 3-year period. (Philadelphia Code §19-1407). In making this determination as to whether the company has been acquired, the City does "look through" upper-tiered entities in holding structures to determine if an acquisition of a lower-tiered real estate company has occurred. The City also will combine changes in ownership that occur at different "tiers" above the relevant real estate company. However, in general, the City will not interpret the Ordinance to impose the tax more than once on a single acquisition transaction.