

March 12, 2021

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**Re: Request for Private Letter Ruling: [REDACTED]
[REDACTED]. Realty Transfer Tax**

Dear [REDACTED]:

Your firm represents both [REDACTED] (“Taxpayer”), a publicly traded real estate investment trust (“[REDACTED]”), and [REDACTED] (“[REDACTED]”), a Delaware corporation that is a qualified REIT subsidiary for federal income tax purposes.

You have represented that the Taxpayer directly owns 100% of [REDACTED] [REDACTED], through a partnership and a chain of disregarded entities, owns 100% of three disregarded entities: [REDACTED], [REDACTED] (“[REDACTED]”); [REDACTED] (“[REDACTED]”); and [REDACTED] (“[REDACTED]”). These three disregarded entities (collectively, “Lower-Tier Entities”) each own real estate located in the City of Philadelphia.

Under Revenue Regulation Section 307, the City must maintain confidentiality of tax returns and related information. However, based upon your representation of the Taxpayer requesting a private letter ruling, the City submits this private letter ruling under the knowledge that the Taxpayer waives their rights to confidentiality of related accounts in this matter, and the City in turn limits this private letter ruling to only the Taxpayer in this instance.

On behalf of the Taxpayer, you have requested a ruling from the City of Philadelphia (“City”) through its Law Department and the Technical Staff of the Revenue Department with regards to the imposition of realty transfer tax (“RTT”) on the conversion of [REDACTED] into [REDACTED]. Specifically, you request a ruling from the City that no RTT will be imposed on the conversion of [REDACTED] into [REDACTED] as no real estate company will become an acquired real estate company.

A. REPRESENTATIONS

You have represented that [REDACTED], and [REDACTED] are each a “real estate company” as defined under Phila. Code § 19-1402(11). [REDACTED] is a “real estate company” as defined in Phila. Code § 19-1402(11). The Taxpayer intends to convert [REDACTED] into a Delaware limited liability company (“[REDACTED]”) under Delaware law (the “Conversion”). Taxpayer is converting this entity to streamline its corporate structure. The Conversion is being undertaken for valid business purposes and is not motivated by transfer tax avoidance. In the six years prior to the Conversion, no changes in the ownership of [REDACTED] have occurred other than (1) the [REDACTED] redemption by [REDACTED] of a de minimis interest held by [REDACTED] preferred shareholders in connection with a tax conversion into a qualified REIT subsidiary, and (2) the [REDACTED] formation of [REDACTED] in connection with the initial acquisition of the property held by [REDACTED] (RTT was remitted for this initial property acquisition). Furthermore, no change in the ownership of either [REDACTED] or Lower-Tier Entities will occur in connection with the Conversion. As title to the real property remains with [REDACTED], [REDACTED], and [REDACTED] respectively, no deeds will be recorded in connection with the Conversion.

You have represented that under Delaware law, upon a conversion of a Delaware corporation into a Delaware LLC, the Delaware corporation continues to exist as the Delaware LLC, and the conversion does not constitute a dissolution or a transfer of assets or liabilities of the corporation. After the Conversion, [REDACTED] will continue to use the same federal employer identification number that [REDACTED] used.

B. ISSUE

Absent a material change in facts, will Philadelphia realty transfer tax be imposed on the Conversion of [REDACTED] into [REDACTED], where no real estate company becomes an acquired real estate company?

Answer: No. Realty transfer tax will not be imposed.

C. PERTINENT AUTHORITY

Realty transfer tax is imposed on the transfer of ownership of real estate situated in Philadelphia, which includes a transfer or transfers by which a real estate company becomes an acquired real estate company. Phila. Code § 19-1403. A real estate company becomes an acquired real estate company upon a 75% or more change in its ownership within a 6-year period. Phila. Code §§ 19-1403 & 19-1407.

A legal entity conversion does not constitute a change in the ownership interest in the company because the converted entity is the same entity as the converting entity. An entity conversion is a state law process to change from one type of entity to another type of entity; in this case, from a Delaware corporation to a Delaware limited liability company. State law dictates a) how a conversion is accomplished, and b) the effects of the conversion of both the entity that converted and the entity into which it is converted.

D. ANALYSIS

Under Delaware law, the conversion does not constitute a dissolution or a transfer of assets or liabilities of [REDACTED]. Under Delaware law, [REDACTED] will also be treated as the same entity as [REDACTED] and continue to own [REDACTED]'s assets without any deemed transfer having occurred.

The Taxpayer represents that it is undertaking the Conversion for a valid business reason other than transfer tax avoidance. After the Conversion, [REDACTED] will own [REDACTED]'s assets, [REDACTED] will continue as the same entity as LLC, no ownership of any entity directly or indirectly owned by [REDACTED] will change, and the Lower-Tier entities will continue to hold the Philadelphia properties with no break in title or interest. As the Conversion does not result in the legal transfer of either the interests in the converting entity itself or in the assets of the converting entity, the Conversion does not result in any real estate company being "acquired" for Philadelphia realty transfer tax purposes.

E. RULING

Based on the facts and representations above, the Conversion of [REDACTED] into [REDACTED] does not result in any real estate entity—i.e., [REDACTED], [REDACTED], [REDACTED], or [REDACTED]—becoming an acquired entity for Philadelphia realty transfer tax purposes. Consequently, no Philadelphia realty transfer tax is imposed as a result of the Conversion.

The City accepts the representations by the parties and has not audited the information within. If facts are not as represented the City may recall its opinion. This ruling is valid only with respect to the taxpayer who requested the opinion, and may not be used or cited as precedent, and no taxpayer may rely on a private tax opinion issued to another taxpayer. The Taxpayer has agreed to pay the designated fee for this opinion letter, and the City has been informed that payment will be received via mail.

Sincerely,

/s/ Mary-Kate Martin
Mary-Kate Martin, Esquire
Deputy City Solicitor
City of Philadelphia Law Department