



CITY OF PHILADELPHIA
LAW DEPARTMENT
TAX & REVENUE UNIT

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April 24, 2021

[REDACTED]

RE: Realty Transfer Tax Ruling

Dear [REDACTED]

On behalf of your client, [REDACTED] (“LLC”), a Delaware limited liability company, you have requested a ruling that the LLC is not a real estate company and therefore, the transaction described herein is not subject to a Philadelphia Real Transfer Tax. You have requested an opinion from the Tax Unit of the Law Department and the Technical Staff of the Revenue Department of the City of Philadelphia (together referred to as “the City”) that no Philadelphia RTT will be due. In addition, you have asked that any publication of the opinion have the specific name redacted. Under Section 17-703(4)(a), a \$1,500.00 ruling fee is required. Please send a check payable to the City of Philadelphia to my attention.

Representations

LLC owns and operates, directly or through subsidiary entities, a chain of gasoline and convenience stores located throughout the United States. Less than [REDACTED]% of LLC’s store locations are located in Philadelphia.

[REDACTED]% of the membership interests in LLC are currently indirectly owned by [REDACTED] (“Parent”).

LLC owns the land and buildings for most of its store sites. Consequently, over [REDACTED]% of LLC’s total tangible assets are composed of real property.

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●% of LLC's receipts were derived from retail sales of tangible goods. In contrast, for each year during that period, less than 2% of LLC's receipts were from the rental or sale of real estate.

LLC also holds ownership interests in several other limited liability companies. Only two of the limited liability companies in which LLC holds an ownership interest directly or indirectly hold an interest in real property. LLC holds a ●% interest in ██████████ ("Sub 1") and a ●% interest in ██████████ ("Sub 2"). Sub 1 and Sub 2 own gasoline and convenience stores. None of the stores owned by Sub 1 and Sub 2 are located in Philadelphia. The interests in Sub 1 and Sub 2 held by LLC do not separately or collectively constitute ●% or more of the total value of the assets of LLC.

Parent has entered into an agreement to sell the membership interests in LLC and several other legal entities to ██████████, an unrelated third party ("Buyer"). None of the legal entities to be sold to Buyer other than LLC, Sub 1 and Sub 2 own real property in Philadelphia.

ISSUE

Is LLC a real estate company for purposes of the Philadelphia realty transfer tax?

Will the sale of the ownership interests in LLC from Parent to Buyer be subject to Philadelphia realty transfer tax?

CONCLUSION

LLC is not a real estate company for purposes of the Philadelphia realty transfer tax.

The sale of the ownership interests in LLC from Parent to Buyer will not be subject to Philadelphia realty transfer tax.

DISCUSSION

Philadelphia realty transfer tax is imposed on a change in ownership of a "real estate company" if the change: (1) does not affect the continuity of the company; and (2) "of itself or together with prior changes has the effect of transferring, directly or indirectly, seventy-five percent (75%) or more of the total ownership interest in the company within a period of six (6) years."¹

A real estate company is defined as "[a] corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety per cent or more of the ownership interest in which is held by thirty-five or fewer persons and which: (1) derives sixty per cent or

¹ Philadelphia City Code § 19-1407(1).

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more of its annual gross receipts from the ownership or disposition of real estate; or (2) holds real estate, the value of which comprises fifty per cent or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.² A corporation or association can also be classified as a “real estate company” if it “holds, directly or indirectly, as ninety percent (90%) or more of the value of its assets, an interest in a real estate company.”³

For purposes of the Pennsylvania realty transfer tax, the Commonwealth has adopted a similar definition for a “real estate company”.⁴

The Pennsylvania Department of Revenue has interpreted the “real estate company” definition as including both a qualitative test (a real estate company must be primarily engaged in the business of holding, selling or leasing the real estate) and objective tests (a real estate company must satisfy either the gross receipts tax or the assets test). An entity must satisfy the qualitative test and at least one of the objective tests to be classified as a “real estate company”.⁵

Thus, in 2004, the Pennsylvania Department of Revenue ruled that a legal entity that operated a cemetery was not a “real estate company”, because the primary business of the entity was providing a service. Although real estate was an integral part of the service provided by the entity, the service was its primary business. The Department likened the business conducted by the entity to a “hotel with a longer stay.”⁶ The Department has also issued an unpublished ruling holding that a partnership that owned a facility and operated that facility through an agent was not a “real estate company”, because the partnership was primarily engaged in the business of providing an unspecified service.⁷

For purposes of the Philadelphia realty transfer tax, an entity that is primarily engaged in a business other than the holding, sale or leasing of real estate is not a real estate company,

² Philadelphia City Code § 19-1402(11)(a)

³ Philadelphia City Code § 19-1402(11)(b).

⁴ 72 P.S. § 8101-C (“Real estate company”) (the only notable difference between the Commonwealth and City definitions is that under the Commonwealth definition of a real estate company, real estate must comprise ninety percent or more of a real estate company’s entire tangible asset holdings, as compared with fifty percent under the Philadelphia definition).

⁵ See PA Department of Revenue Information Notice, Realty Transfer Tax 2014-01 (October 17, 2014) (describing the qualitative test as a threshold requirement for classification as real estate company).

⁶ PA Department of Revenue Realty Transfer Ruling No. RTT-04-008 (March 17, 2004).

⁷ PA Department of Revenue Realty Transfer Ruling No. RTT-06-004 (unpublished) (June 21, 2006).

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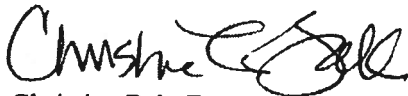
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regardless of whether the entity may satisfy one or both of the objective tests for classification as a real estate company.

Based on the foregoing, we conclude that LLC is not a “real estate company” for purposes of the Philadelphia realty transfer tax, because it is primarily engaged in the business of making retail sales of tangible goods, not the holding, sale or leasing of real estate.

Because LLC is not a real estate company, the sale of the ownership interests in LLC from Parent to Buyer will not cause LLC to become an acquired real estate company within the meaning of Philadelphia City Code § 19-1407(1).

Sincerely,



Christine Bak, Esq.

cc: Frances Beckley
Jon-Michael Olson
Mary Kate Martin
Technical Staff