



SC PRIVATE LETTER RULING #89-20

TO: XYZ

SUBJECT: Realty, Held in Trust, Transferred to a Partnership
(Documentary Tax)

REFERENCE: S.C. Code Ann. Section 12-21-380 (Supp. 1987)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Does the contribution, by a grantor trust, of realty owned by the trust, to a partnership in which the grantors/beneficiaries are the only partners, constitute "realty sold", thereby subject to the documentary tax, pursuant to Code Section 12-21-380?

Facts:

On September 4, 1980 eight persons, who were equal tenants in common of certain properties, transferred their undivided interest in such properties into a trust. The purpose of the trust was to simplify the daily administration of the properties since any action concerning the use of the properties required the approval and signatures of all co-tenants. The trustee under this agreement was ABC. The trust was a grantor trust. Each grantor/beneficiary under the trust held a 12.5% interest in the trust's properties.

On December 15, 1981 the Trust Agreement was amended substituting XYZ, one of the beneficiaries of the trust, as trustee.

On September 1, 1989 these same eight persons, the sole beneficiaries of the grantor trust, formed two partnerships. Each person owns a 12.5% interest in each partnership, the same interest held by each partner, as beneficiaries, in the realty held in the grantor trust.

As beneficiaries of the trust, these eight persons have now directed the transfer of the property from the trust to the partnerships. After the conveyance, each partner will continue to own a 12.5% interest in each partnership, which is the same percentage ownership held by each partner, prior to the transfer, as a beneficiary of the trust.

Discussion:

The issue is the taxability of the transfer, to a partnership, of realty jointly owned by all partners. Code Section 12-21-380 reads, in part:

A deed, instrument, or writing whereby any lands, tenements, or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any value of the interest of property conveyed exclusive of the value of any lien or encumbrance remaining thereon at the time of sale exceeds one hundred dollars and does not exceed five hundred dollars must be taxed one dollar and ten cents and for each additional five hundred dollars, or fractional part thereof, one dollar and ten cents. (emphasis added)

The above cited code section is similar to a now repealed federal documentary tax statute. Internal Revenue Regulation 47.4361-2 (a)(12) stated that "[a] conveyance of realty by a partner to a partnership as a contribution of partnership assets" is a conveyance subject to the tax.

In addition, it has been the long-standing position of the Tax Commission that "[a] conveyance of property to a partnership in the partnership name as a contribution of partnership assets is a conveyance subject to the documentary tax" 1979 Ops. Atty. Gen., No. 2876, p. 12.

However, in M.T. 4, (I.R.S. Manual Transmittal) 1942-2 CB 275, it was held:

Section 3482 of the Internal Revenue Code, as amended by section 1 of the Revenue Act of 1939, sections 209 and 210 of the Revenue Act of 1940, and sections 505 and 521(a)24 of the Revenue Act of 1941, imposes a stamp tax on any "Deed, instrument, or writing * * * whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers * * *." Section 113.81(b) of Regulations 71 (1941) provides that the "term 'sold' imports transfer of title for a valuable consideration which may involve money or anything of value."

A partnership is not a legal entity separate and distinct from its component members. Partnership property is the common property of the partners, whose interest therein is that of co-owners, being similar in many respects to that of tenants in common. Accordingly, since partners are treated as co-owners of all the partnership assets, when a partner contributes real estate to the partnership assets he receives a consideration in exchange. For example, where partners A and B contribute real estate to the partnership, has in effect sold an undivided interest in his land for an undivided interest in B's property. An exchange of real estate constitutes a taxable conveyance of both pieces of real estate. (Section

113.83(a) of Regulations 71 (1941).) Likewise, where A contributes real estate and B contributes an amount of cash or property to the partnership, A has in effect sold an undivided interest in his real estate for an undivided interest in the cash or property contributed by B.

In view of the foregoing, it is held that a conveyance of realty to a partnership by a partner as a contribution to partnership assets constitutes a conveyance of realty sold subject to stamp tax under section 3482 of the Internal Revenue Code, as amended, to the extent that the conveyance is a transfer of an undivided interest in the realty to members of the partnership other than the transferor. (emphasis added)

In summary, a conveyance of realty by a partner to a partnership, as a contribution of partnership assets, is subject to the tax; however, M.T.4, 1942-27 CB 275 qualifies such a statement. The conveyance must be a transfer to partners who are not the grantors or transferors of the realty, in order for the transaction to be subject to the tax.

Conclusion:

A conveyance of realty by a partner to a partnership, as a contribution of partnership assets, is subject to the documentary tax, pursuant to Code Section 12-21-380.

However, where realty, which is owned by a grantor trust, is conveyed by the grantors/beneficiaries of the trust to a partnership in which all of the grantors/beneficiaries are partners, the conveyance is not subject to the documentary tax, if and only if, as here, each partner's percentage interest in the realty held in trust (prior to the conveyance) is the same as his percentage interest in the partnership. Accordingly, the transfer in question is not subject to taxation under Section 12-21-380.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.
S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.
A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell
T. R. McConnell, Commissioner

Columbia, South Carolina
December 12, _____, 1989