

COUNTY AUDITORS SEEK LEGISLATION TO INCREASE REAL ESTATE CONVEYANCE FEE TAX COLLECTIONS

MARCH 5, 2018



STEPHEN K. HALL, JD, LLM
MEMBER

OVERVIEW OF CURRENT LAW AND COMMON PRACTICES

County Auditors in Ohio are permitted to collect a fee for the administration related to the transfer of deeds. There are two elements to the “real estate conveyance fee” (which is also commonly referred to as the “real estate transfer tax”). R.C. 319.54 levies a fee that is measured as 10 cents of every 100 dollars of the value of the real property transferred. Counties, under R.C. 322.02, are also given the authority to levy an additional real estate transfer tax of up to 30 cents per one hundred dollars of value (grand total of maximum fee/tax of 40 cents of every 100 dollars of value of real property transferred; or, denoted as a decimal 0.004). For example, if a tract of land is conveyed via deed for a purchase price of \$1,000,000, the maximum real estate conveyance fee that could apply is \$4,000, assuming the county has enacted the additional 30 cent levy. It is one-time fee related to the transfer of real estate. The \$4,000 in this example is intended to compensate the County Auditors for their work in administering the transfer and the record keeping related thereto.

There are exceptions, however, where the real estate transfer tax does not apply. One of the most common examples of the real estate transfer tax not applying is when the real estate is not directly transferred but is instead is indirectly transferred via a membership unit sale of an entity.

A common practice is for a purported Seller of Parcel A to contribute Parcel A to a newly-formed single member LLC, that is owned by Seller (the single member LLC will be a disregarded entity for federal income tax purposes unless an election is made to not have it be disregarded). The transfer of the real estate from Seller into the single member LLC is not a conveyance that is subject to the real estate conveyance fee because of one of the enumerated exceptions to the fee that exists under current law. Then, the Seller sells the membership units of the newly created single member LLC to the Buyer, instead of directly selling Buyer the real estate itself. That sale of LLC membership units from Seller to Buyer is also not a conveyance that is subject to the real estate transfer tax. The major effects are two-fold. (1) the real estate transfer tax is not due and is a one-time savings to the parties to the sale, and (2) the price paid for the purchase of the membership units is not required to be publicly reported in most circumstances and, therefore, what is effectively the purchase price of real estate is not made public.

PROPOSAL BY COUNTY AUDITORS

The County Auditors Association has proposed a law change to prevent the conveyance fee from being avoided and to allow for more transparency of the reporting of the consideration paid when real estate is transferred. The proposal is still being drafted and negotiated, so at the time of this writing, there is not an official Ohio Senate Bill or Ohio House Bill number associated with the proposal. It is our understanding that the draft will be revised to address some unintended consequences. However, as of this writing, the proposal would have significant impact, if it were to be enacted in its current form.

As an overview, the proposal would:

- Eliminate the ability to avoid the real estate transfer tax by doing the “drop and swap” LLC unit sale discussed above.
- Require statements to be filed with the County Auditor when there is a transfer of any ownership interest in a pass-through entity, that directly or indirectly owns real estate (this provision would not apply to the first step described above wherein the single member LLC is capitalized with the contribution of Parcel A). The statements include the requirement to list the following information:
 - The value of all real property in the county that is owned, directly

or indirectly, by the pass-through entity in which the ownership interest is being transferred.

- The percentage of the ownership interest in the entity being transferred.
 - With respect to real property owned directly or indirectly by the entity in which the ownership interest is being transferred, that entity's percentage ownership interest in the entity that directly owns the property.
- Require the real estate transfer tax to be paid with respect to the value of the real estate that was effectively transferred via the sale of an ownership interest in the pass-through entity, unless an exception applies (as in the first part of the example above wherein the single member LLC is capitalized with the contribution of Parcel A); this computation is done in a complicated manner that is based on ownership ratios.

ZHF OBSERVATIONS

The proposal could create many problems for real estate owners. There are often valid business reasons for selling membership units of pass-through entities as opposed to directly selling real estate, yet the proposal nonetheless targets any sale of any portion of a pass-through entity that owns real estate, regardless of the goals of the transaction. The proposal could also technically apply to sales of publicly traded partnership interests if the publicly traded partnership owns real estate. These and other problems could potentially be fixed if brought to the attention of the policy-makers.

If you have any concerns or questions about this proposal or any other state or local tax matter, please contact Steve Hall, Tom Zaino, or any of our other professionals.

ZAINO HALL & FARRIN LLC

ATTORNEYS AT LAW

WWW.ZHFTAXLAW.COM

614-326-1120

855-770-1120 (toll-free)

RON AMSTUTZ

(non-attorney professional)
614-782-1545(Direct)
330-347-3533 (Mobile)
ronamstutz@zhfconsulting.com

STEVE AUSTRIA

(non-attorney professional)
614-349-4820 (Direct)
937-609-8355 (Mobile)
saustria@zhftaxlaw.com

THOMAS R. FAGAN

614-782-1541 (Direct)
330-607-7103 (Mobile)
tfagan@zhftaxlaw.com

RICHARD C. FARRIN

614-349-4811 (Direct)
614-634-3130 (Mobile)
rfarrin@zhftaxlaw.com

ADAM L. GARN

614-349-4814 (Direct)
agarn@zhftaxlaw.com

STEPHEN K. HALL

614-349-4812 (Direct)
614-284-1253 (Mobile)
shall@zhftaxlaw.com

CHARLOTTE B. HICKCOX

(non-attorney professional)
614-349-4819 (Direct)
614-537-4339 (Mobile)
chickcox@zhftaxlaw.com

DEBORA D. MCGRAW

614-349-4813 (Direct)
614-595-5560 (Mobile)
dmcgraw@zhftaxlaw.com

BRAD W. TOMLINSON

(non-attorney professional)
614-349-4818 (Direct)
btomlinson@zhftaxlaw.com

JOHN R. TRIPPIER

(non-attorney professional)
614-349-4815 (Direct)
614-203-4173 (Mobile)
jtrippier@zhftaxlaw.com

JASON WALKER

(non-attorney professional)
614-349-4817 (Direct)
916-533-1626 (Mobile)
jwalker@zhftaxlaw.com

THOMAS M. ZAINO

614-349-4810 (Direct)
614-598-1596 (Mobile)
tzaino@zhftaxlaw.com