



Transfer or Acquisition of a Controlling Interest - Additional Guidance

Introduction

When there is a transfer or acquisition of a controlling interest in a partnership, corporation, or other entity with an interest in real property, the change in ownership of the entity results in a conveyance of the underlying real property subject to the real estate transfer tax. This Tax Bulletin addresses four specific situations that arise in these kinds of conveyances:

- How is consideration computed when the balance of a mortgage on the real property exceeds its fair market value?
- When a lender or other secured party acquires a controlling interest in an entity upon the foreclosure of a security interest in shares of stock, partnership interests, or other ownership instruments, will the subsequent foreclosure of the fee mortgage be exempt as a mere change of identity?
- Does the real estate transfer tax apply to a transfer or acquisition of a controlling interest in an entity that holds an option or contract to purchase real property?
- Does the real estate transfer tax apply to a transfer or acquisition of a controlling interest in an entity with a leasehold interest with a remaining term of less than 49 years?

(For information on other related topics, see [Publication 576](#), *Transfer or Acquisition of a Controlling Interest in an Entity with an Interest in Real Property*.)

Consideration where the balance of the mortgage exceeds the fair market value

In general, when there is a transfer or acquisition of a controlling interest, consideration is the fair market value of the real property, or the interest in the real property apportioned based on the percentage of the ownership interest transferred or acquired in the entity (See Regulations section 575.1(d)(4)).

When a controlling interest is transferred or acquired as the result of a secured party's enforcement of a lien, security interest, or other rights on or in shares of stock, partnership interests, or other instruments, consideration is the **lesser** of:

- the fair market value of the property on the date of conveyance apportioned based on the percentage of the ownership interest transferred or acquired in the entity, or
- a reasonable apportionment to the interests in real property of certain debts and liens attributable to the ownership interests and to the real property. (For details, see Regulations section 575.11(a)(16)).

Subsequent foreclosure of a fee mortgage / mere change of identity

When a lender or other secured party acquires a controlling interest in an entity upon the foreclosure of a security interest in shares of stock, partnership interests, or other ownership instruments, the conveyance upon the subsequent foreclosure of the fee mortgage will be exempt as a mere change of identity to the extent of the ownership interest in the entity held by the lender or other secured party.

Example: X owns 60% of the voting stock of C corporation. C corporation's only asset is a building in New York City with a fair market value of \$2 million. This building is encumbered by a mortgage to L in the amount \$1,500,000. X has also pledged all of its voting stock in C corporation to L as security for a separate debt of \$500,000. Upon default of the debt for \$500,000, L enforces its security interest in the voting stock of C corporation held by X, resulting in both a transfer and acquisition of a controlling interest in C corporation. After enforcing its security interest in the voting stock taken over from X, L holds a 60% ownership interest in C corporation. Upon C corporation's default of the outstanding mortgage, L moves to take the building in a foreclosure action. Since L owns 60% of C corporation, the conveyance is exempt as a mere change of identity to the extent of 60%.

Transfer or acquisition of a controlling interest in an entity that holds an option or contract to purchase real property

An option or contract to purchase real property is an interest in real property. Therefore, the transfer or acquisition of a controlling interest in an entity that holds an option or contract to purchase real property results in a conveyance of an interest in real property that is subject to tax. The consideration is the fair market value of the option or contract to purchase real property, apportioned based on the percentage of the ownership interest transferred or acquired in the entity that holds the option or contract to purchase the real property.

Transfer or acquisition of a controlling interest in an entity with a leasehold interest with a remaining term of less than 49 years

A leasehold interest, **regardless of the term**, is an interest in real property. Therefore, the transfer or acquisition of a controlling interest in an entity that holds a leasehold interest results in a conveyance of an interest in real property that is subject to tax. The consideration is the fair market value of the leasehold interest, apportioned based on the percentage of the ownership interest transferred or acquired in the entity that holds the leasehold interest.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Tax Law: Sections 1401(b); (d); (e); (f); 1402(a); and 1405

Regulations: Sections 575.1(d)(4); 575.7(d); and 575.11(a)(16)

Publications:

[Publication 576](#), *Transfer or Acquisition of a Controlling Interest in an Entity with an Interest in Real Property*