

**TAX APPEAL BOARD OF THE STATE OF DELAWARE**

<b>AUTOMOTIVE SERVICE COMPANY</b>	)	
<b>DELTUNE, INC.</b>	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>Docket No. 1015</b>
	)	
<b>DIRECTOR OF REVENUE,</b>	)	
	)	
Respondent.	)	
_____	)	

Before: John H. Cordrey, Esquire, Chairman; David Eppes, and Regina Dudziec, Members.

Petitioner is represented by Walter P. McEvelly, Jr., of Prickett, Jones, Elliott, Kristol & Schnee.

Joseph Patrick Hurley, Jr., Esquire, Deputy Attorney General for Respondent.

**DECISION AND ORDER**

John H. Cordrey, Esquire, Vice Chairman. This is the Board's decision regarding Petitioner's Petition.

The parties have stipulated to the facts regarding this matter which are attached to this order and incorporated herein by reference. The essential facts are that Petitioner Automotive Service Company is a Maryland Partnership with its partners consisting of Messrs. Rubin, Shevitz and Osterchrist. Petitioner Deltune, Inc. is a Maryland corporation whose stockholders are the same three individuals. Automotive Services transferred four Delaware properties to Deltune, Inc. and claimed an exemption from the realty transfer tax pursuant to 30 Del.C. §5401(1)(n). Respondent asserted that Petitioner was responsible for transfer taxes in the amount of \$13,528.

Petitioner contends that the transfer from a partnership to a corporation where the partners and stockholders are the same persons in the same percentage of ownership is exempt

pursuant to 30 Del.C. §5401(1)(n). That subsection provides a transfer of real estate shall not be subject to transfer tax for a conveyance which includes, in pertinent part:

n. Any conveyance to or from a corporation, or a partnership, where the grantor or grantee owns stock of the corporation or an interest in the partnership in the same proportion as his interest in or ownership of, the real estate being conveyed...

Respondent contends that 30 Del.C. §5401(1)(n) does not apply in that the transfer in question was not a transfer to "...a corporation...where the grantor...owns stock of the corporation...in the same proportion as his interest in or ownership of, the real estate being conveyed..." Respondent contends that the grantor in this transaction is Automotive Service Company, not Messrs. Rubin, Shevitz, and Osterchrist. Therefore the grantor (i.e. Automotive Service Company) has no interest in the corporation, which is admittedly owned by Messrs. Rubin, Shevitz, and Osterchrist, and the transfer tax applies to the transfer.

To buttress the argument, Respondent relies upon State Tax Commissioner v. duPont, Del.Supr., 118 A.2d 469 (1955). That case states the rule of construction that exemptions from taxation are strictly construed against the taxpayer and failure to fall within the letter as well as the spirit of the law will result in the exemption being inapplicable.

Petitioner argues that Respondent's contentions are misplaced in that the provisions of 6 Del.C. §1525(a) provide that each partner is a co-owner of property as a tenant in partnership with his partners. Therefore the real estate which was conveyed, although titled in the name of the partnership (Automotive Service Company), was, by law, owned as a tenant in partnership (one-third each by Messrs. Rubin, Shevitz, and Osterchrist). Since the grantors in the transaction were, pursuant to the law, Messrs. Rubin, Shevitz, and Osterchrist and said three likewise were the stockholders in the same proportion in the grantee corporation, the transfers are exempt from the transfer tax.

We agree and find that the transaction in this case falls within the exemption of 30 Del.C. §5401(1)(n). The transfer was made from a partnership where the partners each owned a percentage of the real estate conveyed as a tenant in partnership to a corporation which was

owned by the same persons in the same percentages. This transaction is the type of transfer for which 30 Del.C. §5401(1)(n) provides an exclusion.

In an analogous case before this Board, five parcels of land owned by five different owners were transferred to a partnership owned by the five individuals in proportion to the value of the real estate owned by them. The Respondent in that case, as in this matter, argued that the strict reading of 30 Del.C. §5401(1)(n) meant the five individuals owned no portion of the other partners' real estate which was ultimately transferred to the partnership and therefore the transfer was taxable. The Supreme Court, affirming this Board's decision and rejecting Respondent's argument, in Ocean Harbor Associates v. Director of Revenue, Del.Supr., 565 A.2d 893 (1989) found that although each parcel of land was not owned collectively by the individuals who later comprised the partnership, such was not required by this subsection. The Court held there that the interest in the partnership corresponded to the value of each partner's interest in the real estate conveyed and therefore found the exemption of 30 Del.C. §5401(1)(n) to apply.

Ocean Harbor is analogous to this case and its rationale mandates finding for the Petitioner. Likewise the Petitioner here has demonstrated by both law and fact that the transfer was to "...a corporation [Deltune, Inc.]...where the grantor[Messrs. Rubin, Shevitz and Osterchrist as Tenants in Partnership]...owns stock of the corporation...in the same proportion as his interest in or ownership of, the real estate being conveyed..." as required by the statute in order to be exempt.

Based upon the foregoing the Director's Notice of Determination is reversed.

SO ORDERED, this 10<sup>th</sup> day of January, 1997.

John H. Cordery  
Regina C. Anderson

[Signature]