



STATE OF CONNECTICUT
DEPARTMENT OF REVENUE SERVICES

SN 2003(11)

25 Sigourney Street
Hartford CT 06106-5032

SPECIAL NOTICE

2003 Legislation Affecting the Controlling Interest Transfer Taxes

Purpose: This Special Notice discusses 2003 legislation affecting the controlling interest transfer taxes.

Effective Date: August 1, 2003, for transfers of a controlling interest occurring on or after August 1, 2003.

Statutory Authority: Conn. Gen. Stat. §12-638b, as amended by 2003 Conn. Pub. Acts 1, §100 (June 30 Spec. Sess.).

Definitions: As used in this Special Notice:

- **Controlling interest** means, in the case of a corporation, more than 50% of the total combined voting power of all classes of stock in the corporation, or in the case of a noncorporate entity (such as a partnership, limited liability company, or trust), more than 50% of the capital, profits, or beneficial interest in the noncorporate entity.
- **Real property** means any interest, legal or equitable, present or future, vested or contingent, in real property, which interest endures for a period of time, the termination of which is not fixed or ascertained by a specific number of years, such as an estate in fee simple or a life estate, provided a conveyance of such interest would be considered a conveyance of real property for purposes of the real estate conveyance taxes imposed under Chapter 223 of the Connecticut General Statutes.
- **Present true and actual value** of real property is its fair market value, unreduced by the amount of any mortgage, lien or other encumbrance, as of the time of the transfer of a controlling interest.

- **Farm land** means land classified as such under Conn. Gen. Stat. §12-107c.
- **Forest land** means land classified as such under Conn. Gen. Stat. §12-107d.
- **Open space land** means land classified as such under Conn. Gen. Stat. §12-107e.
- **Partnership** includes a limited partnership or a limited liability partnership.
- **Corporation** means a C corporation, an S corporation or any association taxable as a corporation for federal income tax purposes.

Overview: A controlling interest transfer tax is imposed on the transfer for consideration of a controlling interest in an entity, whether it be a corporation, partnership, association, trust, limited liability company or other organization, where the entity owns, directly or indirectly, an interest in Connecticut real property. (See *What is direct or indirect ownership of an interest in Connecticut real property?* below.)

A contract to transfer an interest is not a transfer of the interest if the contract does not vest legal title to the interest in the transferee. Once a taxable transfer of a controlling interest in an entity by a transferor to a transferee has occurred, any additional transfer of an interest in the entity by the transferor to the transferee is not a taxable transfer.

The tax applies only if the present true and actual value of an entity's interest in Connecticut real property owned, directly or indirectly, by the entity equals or exceeds \$2,000. If more than one parcel of Connecticut real property is owned, directly or indirectly, by an entity, the tax applies only if the aggregate present true and actual value of the entity's interest in those parcels equals or exceeds \$2,000.

The transferor or transferors—not the transferee or transferees—are subject to the tax. Where a group of persons acting in concert transfers a controlling interest in an entity, these transferors are jointly and severally liable for the tax. A group of persons are deemed to be acting in concert if there is a unity with which the transferors have negotiated and will consummate the transfers or if the transferors are so related that one influences or controls the action of another (such as affiliated corporations). Factors that may indicate a unity with which transferors have negotiated and will consummate the transfers include transfers closely related in time; few transferors; contracts to transfer containing mutual terms, or agreements among transferors, binding themselves to a course of action with respect to the transfers.

The transfer of a controlling interest may occur in one transaction or in a series of transactions.

The measure of the tax is the present true and actual value of Connecticut real property owned, directly or indirectly, by an entity in which a controlling interest is transferred. (See *How is the present true and actual value of Connecticut real property determined?* below.)

The tax rate is 1.11% of the present true and actual value of Connecticut real property owned, directly or indirectly, by the entity in which a controlling interest is transferred.

Form AU-330, *Controlling Interest Transfer Taxes*, must be filed by the transferor on or before the last day of the month following the month during which a controlling interest in an entity was transferred. Where the transfer is made in a series of transactions, **Form AU-330** must be filed on or before the last day of the month following the month during which the interest sold or transferred, in the aggregate, first exceeds 50%. Where a group of transferors acting in concert transfers a controlling interest, one **Form AU-330**, signed by each member of the group, is to be filed.

Form AU-331, *Controlling Interest Transfer Taxes Informational Return*, must be filed by the entity in which a controlling interest was transferred on or before the last day of the month following the month during which the controlling interest was transferred. The entity is also required to maintain records pertaining to any transfer.

An additional controlling interest transfer tax is imposed under Conn. Gen. Stat. §12-638l on the transfer for consideration of a controlling interest in an entity that **directly** owns an interest in farm land, forest land, or open space land. The tax rate ranges from 1% to 10%, depending on:

- In the case of farm land and forest land, when the land was so classified or when the land was acquired, whichever is earlier, and
- In the case of open space land, when the land was classified.

Land is considered classified as farm land, forest land, or open space land, as the case may be, on the first day of the initial assessment year in which the land was so classified by the entity.

Changes made by the new law:

Indirect ownership. Under the new law, the tax applies if the entity in which a controlling interest is transferred owns, directly or indirectly, an interest in Connecticut real property. Under the old law, the tax applied only if the entity in which a controlling interest was transferred **directly** owned an interest in Connecticut real property.

Group of transferors acting in concert. Under the new law, transferors who are related to each other by blood or marriage are presumed, unless shown to the contrary (to the satisfaction of the Department of Revenue Services (DRS)), to be acting in concert. Under the old law, no such statutory presumption existed.

Taxable transfer occurring in a series of transactions. Under the new law, transactions occurring within six months of each other are presumed, unless shown to the contrary (to the satisfaction of DRS), to be a series of transactions. Under the old law, no such statutory presumption existed.

Group of transferees need not be acting in concert. Under the new law, if a transfer of a controlling interest is made to more than one transferee, the transferees need not be a group acting in concert for a taxable transfer to occur. Under the old law, if a transfer of a controlling interest was made to more than one transferee, the transferees had to be a group acting in concert for a taxable transfer to occur.

Additional tax does not extend to indirect ownership of farm land, forest land, or open space land. The new law does not extend the additional tax under Conn. Gen. Stat. §12-6381 to the transfer for consideration of a controlling interest in an entity, to the extent the entity only **indirectly** owns an interest in farm land, forest land, or open space land.

What is direct or indirect ownership of an interest in Connecticut real property?

An entity **directly owns** an interest in real property if the entity owns the real property.

An entity **indirectly owns** an interest in real property if the entity does not own the real property but has an ownership interest, whether directly or indirectly, in a corporate or noncorporate organization that owns, directly or indirectly, the real property. Rules of attribution are used to determine the entity's indirect ownership interest in the real property. (See *What are the rules of attribution used to determine the real property indirectly owned by an entity?* below.)

Example 1: A transferor transfers a controlling interest in corporation *C* to a transferee. *C* does not directly own an interest in Connecticut real property, but corporation *D*, *C*'s wholly owned subsidiary, owns several parcels of Connecticut real property. Therefore, *C* indirectly owns an interest in Connecticut real property. Consequently, the transferor's transfer of a controlling interest in *C* to the transferee is subject to the controlling interest transfer tax, as long as the aggregate true and actual value of *C*'s interest in the parcels of Connecticut real property indirectly owned by *C* equals or exceeds \$2,000.

How is the present true and actual value of Connecticut real property determined?

The present true and actual value of Connecticut real property **directly owned** by an entity is 100% of the present true and actual value of the property. This is the case even in those instances where the transfer of a controlling interest in the entity involves, in the case of a corporate entity, less than 100% of the total combined voting power of all classes of stock in the corporation, or in the case of a noncorporate entity (such as a partnership, limited liability company, or trust), less than 100% of the capital, profits, or beneficial interest in the noncorporate entity.

The present true and actual value of an entity's interest in Connecticut real property **indirectly owned** by the entity is the entity's **applicable ownership percentage** (as defined below) of what would otherwise be the present true and actual value of the property. An entity's **applicable ownership percentage** is, if the real property is owned, directly or indirectly, by a corporation, the percentage of the total combined voting power of all classes of stock of the corporation the entity owns, or, if the real property is owned, directly or indirectly, by a noncorporate organization (such as a partnership, limited liability company, or trust), the percentage of the capital, profits, or beneficial interest in the noncorporate organization the entity owns.

Example 2: A transferor transfers a controlling interest in limited liability company *E* to a transferee. *E* does not directly own an interest in Connecticut real property. Both partnership *G* and corporation *H* own an interest in Connecticut real property. *E* has a 60% partnership interest in *G*, and owns 40% of the total combined voting power of all classes of stock of *H*. Therefore, *E* indirectly owns an interest in Connecticut real property. Consequently, the transferor's transfer of a controlling interest in *E* to the transferee is subject to the controlling interest transfer tax, as long as the aggregate present true and actual value of *E*'s interest in the parcels of Connecticut real property indirectly owned by *E* equals or exceeds \$2,000. The present true and actual value of *E*'s interest in *G*'s Connecticut real property is the product of what would otherwise be the present true and actual value of the real property multiplied by the applicable ownership percentage (in this case, 60%). The present true and actual value of *E*'s interest in *H*'s Connecticut real property is the product of what would otherwise be the present true and actual value of the real property multiplied by the applicable ownership percentage (in this case, 40%).

What are the rules of attribution used to determine the real property indirectly owned by an entity?

- Real property owned, directly or indirectly, by a partnership is considered owned proportionately by the partners.
- Real property owned, directly or indirectly, by a limited liability company is considered owned proportionately by the members.

- Real property owned, directly or indirectly, by a corporation is considered owned proportionately by the shareholders.
- Real property owned, directly or indirectly, by a trust is considered owned proportionately by the beneficiaries.

Example 3: A transferor transfers a controlling interest in partnership *J* to a transferee. *J* does not directly own an interest in Connecticut real property. Corporation *K* owns an interest in Connecticut real property. *K* is a wholly owned subsidiary of corporation *L*. *J* owns 70% of the total combined voting power of all classes of stock of *L*. Corporation *M* owns the other 30% of the total combined voting power of all classes of stock of *L*. *J* also owns 40% of the total combined voting power of all classes of stock of *M*. Therefore, *J* indirectly owns an interest in Connecticut real property. Consequently, the transferor's transfer of a controlling interest in *J* to the transferee is subject to the controlling interest transfer tax, as long as the aggregate present true and actual value of *J*'s interest in the parcels of Connecticut real property indirectly owned by *J* equals or exceeds \$2,000. The present true and actual value of *J*'s interest in *K*'s Connecticut real property is the product of what would otherwise be the present true and actual value of the real property multiplied by the applicable ownership percentage. Here, the applicable ownership percentage is 82%, which is the sum of 70% (*L*'s 100% ownership of the total combined voting power of all classes of stock of *K* multiplied by *J*'s 70% ownership of the total combined voting power of all classes of stock of *L* (70% multiplied by 100%)) and 12% (*L*'s 100% ownership of the total combined voting power of all classes of stock of *K* multiplied by *M*'s 30% ownership of the total combined voting power of all classes of stock of *L* multiplied by *J*'s 40% ownership of the total combined voting power of all classes of stock of *M* (100% multiplied by 30% multiplied by 40%)).

What version of the return should be filed?

The August 2003 revision of **Form AU-330**, *Controlling Interest Transfer Taxes*, **Form AU-330I**, *Instructions for the Controlling Interest Transfer Taxes*, and **Form AU-331**, *Controlling Interest Transfer Taxes Informational Return*, will be posted on the DRS Internet web site on or before September 15, 2003. ("Rev. 8/03" appears under the

DRS mailing address in the upper left hand corner of the August 2003 revision of **Form AU-330** and **Form AU-331**, and in the lower left hand corner of the August 2003 revision of **Form AU-330I**.)

Persons filing **Form AU-330** or **Form AU-331** for months beginning on or after August 1, 2003 may not use the April 2002 version of the return or instructions. ("Rev. 4/02" appears under the DRS mailing address in the upper left hand corner of the April 2002 revision of **Form AU-330** and **Form AU-331**, and in the lower left hand corner of the April 2002 revision of **Form AU-330I**.)

Effect on Other Documents: LSN-89, *Revised Special Notice Concerning Controlling Interest Transfer Taxes*, and LSN 90-4, *Special Notice Concerning Controlling Interest Transfer Taxes*, are modified and superseded and may not be relied upon with respect to transfers of a controlling interest occurring on or after August 1, 2003.

Effect of This Document: A Special Notice announces a new policy or practice in response to changes in State or federal laws or regulations or to judicial decisions. A Special Notice indicates an informal interpretation of Connecticut tax law by DRS.

For Further Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (in-state), or
- **860-297-5962** (from anywhere)

TTY, TDD, and Text Telephone users only may transmit anytime by calling 860-297-4911.

Forms and Publications: Forms and publications are available anytime by:

- **Internet:** Preview and download forms and publications from the DRS Web site: www.ct.gov/DRS
- **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu.
- **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (in-state) and select **Option 2** from a touch-tone phone.