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Connecticut's Controlling Interest Transfer Tax - The "hidden" real estate conveyance tax

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Because of the lobbying efforts of the Connecticut Association of Realtors, the Connecticut Conference of Municipalities and others during the most recent legislative session, Connecticut's state and municipal real estate conveyance taxes have received a great deal of attention and discussion recently. One similar tax that is frequently overlooked is the Controlling Interest Transfer Tax (CITT), first enacted in 1989.

Unlike the conveyance tax which applies to deeds and other transfers of real property from one person or entity to another, the CITT is triggered when there is a transfer of the "controlling interest of any entity which possesses, directly or indirectly, an interest in real property [in Connecticut] when the present true and actual value of the interest in real property equals or exceeds two thousand dollars."

In turn, a "controlling interest" is defined to mean, in the case of a corporation, "more than 50% of the total combined voting power of all classes of stock of such corporation", and, in the case of a partnership, association, trust or other entity, "more than 50% of the capital, profits or beneficial interest" in such entity. As initially enacted, the CITT was triggered by the transfer of 50% or more of the stock or equity. The current language, which requires the transfer of more than 50%, was adopted in 1990.

The CITT, payable at the rate of 1.10%, is remitted to the Commissioner of Revenue Services with the Form AU-330, which may be obtained from that department. It is due on or before the last day of the month following the month in which the transfer took place and is subject to interest at 1% per month and a late payment penalty equal to the greater of \$50 or 10% of the tax due.

There are two presumptions which further expand the scope of the CITT. First, a series of transactions would also trigger the tax. Two or more transactions which occur within six months of each other are presumed to be "a series of transactions" unless shown to the contrary. Thus, a series of smaller transactions which, when taken together, result in the transfer of more than 50% of the equity in an entity, shall be deemed to be a taxable transfer. Likewise, a number of smaller transfers made by a group of sellers or transferors acting in concert may be presumed to constitute a taxable transfer - particularly if the sellers are related to each other by blood or marriage.

The tax is based on the "true and actual value of the Connecticut real property" being transferred. This is defined to mean the fair market value as of the time of transfer with no reduction for any outstanding mortgages or other liens. If the entity owns less than a 100% interest in the real estate, the tax is based on the actual percentage of ownership, with no further discounts on account of minority ownership.

Two types of transfers are exempt from the CITT. First, it does not apply to transfers of real estate located within areas designated as an enterprise zone. Second, like the real estate conveyance tax

as currently in effect, it does not apply to "any sale or transfer of a controlling interest in any entity to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership." To the extent that DRS pronouncements and court decisions provide insights into the interpretation of that language, they should apply equally to the CITT.

Finally, the CITT contains provisions which are parallel to the additional conveyance recapture tax payable upon the transfer of real estate which has been classified as open space, maritime heritage, farm or forest land. This aspect of the tax assesses a declining penalty for the sale of one of those categories of real estate during the first ten years following its classification. There are a substantial number of transfers listed in the statute which are exempt from this additional recapture tax. Similarly, DRS pronouncements and case law interpreting the open space conveyance tax provisions would probably be helpful here.

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