Senate
Finance Committee

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BILL SUMMARY

Legislation: Senate Bill 1388, P.N. 1923
Sponsor: Senator Ferlo
Act Amended: Tax Reform Code of 1971
Topic: Acquired Company Transactions
Date: April 26, 2012

Synopsis:

Senate Bill 1388 amends the Realty Transfer Tax ("RTT") to broaden the definition of "real estate company" and provides further instances in which a "real estate company" shall become an "acquired company" triggering the application of realty transfer tax.

Summary:

Senate Bill 1388 amends the Realty Transfer Tax ("RTT") to broaden the definition of "real estate company" by:

1. reducing the threshold for real estate owned from 90% to 50%; and
2. including real estate owned outside the Commonwealth.

Senate Bill 1388 also provides that a "real estate company" shall become an "acquired company" triggering the application of realty transfer tax, if a party:

1. provides a legally binding commitment to execute a transfer;
2. the commitment is given within three years of another transfer; and
3. taken together, both transfers would effect a transfer of 90% or more of the total ownership interests in the company.

The legislation shall take effect in 60 days.

Current law:

Under section 1101-C of the TRC, a "real estate company" is defined as follows as a corporation or association which is primarily engaged in the business of holding, selling or leasing real estate ninety per cent or more of the ownership interest in which is held by 35 or fewer persons and which:

1. derives 60% or more of its annual gross receipts from the ownership or disposition of real estate; or
2. holds real estate in the Commonwealth, the value of which comprises 90% or more of the value of its entire tangible asset holdings exclusive of tangible assets which are freely transferable and actively traded on an established market.

Under section 1102-C.5 of the TRC, a “real estate company” is an “acquired company” upon a change in the ownership interest in the company, however effected, if the change:

1. does not affect the continuity of the company; and
2. of itself or together with prior changes has the effect of transferring, directly or indirectly, <u>90% or more</u> of the total ownership interest in the company <u>within a period of three years</u>.

Background:

This legislation addresses the situation where there is a transfer of up to 89% of interests in a “real estate company” and the transferring party provides an option to sell the remaining 11% interest, exercisable 3 years and 1 day after the initial transfer. These so called 89/11 real estate transactions allows a seller to transfer 89% of its interest in an entity owning real estate without triggering realty estate transfer tax so long the subsequent 11% transfer does not occur within 3 years of the initial transfer. Typically, buyer and seller agree to all material terms of the subsequent transfer as part of the initial 89% transfer.