

REBA Title Standard No. 17

CORPORATE TAX LIENS

Land is free of the Massachusetts corporate excise tax lien three years after the sale or transfer of all or substantially all of the assets situated in Massachusetts of a business corporation as defined in MGL c.63, s.30 and sooner when the Tax Commissioner or Commission issues a waiver of the lien.

Comments

A. The term “Business Corporation” is defined in MGL c.63, s.30 to mean “any corporation, or any ‘other entity’ as defined in section 1.40 of chapter 156D, whether the corporation or other entity may be formed, organized, or operated in or under the laws of the Commonwealth or any other jurisdiction, and whether organized for business or for non-profit purposes, that is classified for the taxable year as a corporation for federal income tax purposes.”

B. The term “other entity” is defined in MGL c.156D, s.1.40 to mean “any association or entity other than a domestic or foreign business corporation, a domestic or foreign nonprofit corporation or a governmental or quasi-governmental organization. The term includes, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts and profit and not-for-profit unincorporated associations.”

C. The Massachusetts corporate tax lien imposed by M.G.L. c. 62C, § 51 does not apply to

(1) sales or transfers by entities that are not classified for the current taxable year as corporations for federal income tax purposes, or

(2) sales or transfers in the ordinary course of business, or

(3) sales or transfers by receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or public officers acting under judicial process, or

(4) transfers by way of security, but it does apply to transfers made as security for the performance of an obligation not incurred in good faith.

D. A recitation in the deed of a business corporation as defined in MGL c.63, s.30 that

(1) the grantor is not classified for the current taxable year as a corporation for federal income tax purposes, or

(2) that the conveyance does not constitute the sale or transfer of all or substantially all of the grantor’s assets within the Commonwealth of Massachusetts, or

(3) that the conveyance does constitute a sale or transfer in the ordinary course of the grantor's business,

absent other information to the contrary, is considered sufficient to avoid the necessity of obtaining a tax lien waiver.

E. A waiver of lien issued by the Commissioner of Revenue in writing is final and conclusive evidence as to anyone other than the corporation that the lien either has not arisen or has terminated. The waiver should be recorded with the Registry of Deeds.

F. Prior to the tax year beginning January 1, 2009, the corporate excise tax and the lien imposed by M.G.L. c. 62C, § 51 applied only to domestic and foreign business corporations.

Adopted November 11, 1974

Amended November 5, 2001

Amended November 9, 2009