



# *Pennsylvania Tax Reports*

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## ***TRANSFER TO LIMITED PARTNERSHIP IS TAXABLE***

A panel of the Commonwealth Court held that a transfer from an individual to a limited partnership in which the individual held all the beneficial interests was taxable for Realty Transfer Tax purposes. *Penn Towers Associates, L.P. v. Commonwealth*, No. 225 F.R. 2003 (Pa. Commw. Jan. 25, 2005). The taxpayer transferred real estate to a limited partnership in which he was the limited partner and owned the LLC general partner. He claimed that no tax should be due, citing *Exton Plaza Associates*, 763 A.2d 521 (Pa. Commw. 2000), for the proposition that a transfer that does not effect a change in beneficial interest is not taxable. The Commonwealth Court disagreed, citing *Farda v. Commonwealth*, 849 A.2d 297 (Pa. Commw. 2004), which held that a transfer from individuals to a limited partnership in which they were the sole partners was subject to tax. The court distinguished *Exton Plaza* on the ground that there the parties stipulated that a general partnership “converted” to a limited partnership. The court repeated the statement in *Exton Plaza* that if a general partnership “converts” to a limited partnership, the mechanics of the conversion are not important; what counts is whether there is a change in beneficial ownership. Since the beneficial ownership remained the same, the conversion was not taxable. The court declined to extend that view to a transfer between an individual and an entity owned by the individual.

It seems clear from *Exton Plaza* and *Penn Towers* that the transfer of property incident to changing a partnership from one form to another is not taxable, no matter how it is done, but that going from individual to partnership ownership is taxable. What is not clear from the decision is whether tax will be incurred if an entity changes from one jurisdiction to another -- for example, from a Pennsylvania LLC to a Delaware LLC. Nor is it clear whether changing from one form of an entity to another is taxable - for example, changing from an LLC to a partnership. Neither is it clear what will be the result in a true conversion. Under the laws of some states, an entity can convert from, for example, a partnership to a corporation, with state law providing that the entity is considered the same entity but governed after the conversion by different statutory rules. The transaction involved in *Exton Plaza* was not a true conversion in that sense, but was the formation of a new entity and the transfer of property from the old entity to the new entity.