

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 2006-1

DATE: January 31, 2006

SUBJECT: AN ACT TO AMEND TITLE 30 RELATING TO REALTY TRANSFER TAX PERTAINING TO MERGER TRANSACTIONS

House Bill 330, with Amendment No. 2, is designed to close the “merger” exception established in a recent Delaware Supreme Court decision, pertaining to Realty Transfer Tax. House Bill 330 makes it clear that merger transactions and all kinds of indirect dealings in intangible property that are properly characterized as a sale of real property under § 5401(7) are intended to be taxed under the Realty Transfer Tax.

The Amendment makes technical corrections to House Bill No. 330 and codifies existing practice with respect to the treatment of publicly traded limited liability company membership interest. Because House Bill No. 330 is clearly intended to be liberally construed to effectuate its remedial purpose of limiting avoidance of realty transfer tax through dealings in intangible interests, this Amendment also strikes seemingly unnecessary language.

The Amendment also ensures that formally written and executed merger agreements occurring before the date of enactment will be grandfathered under current law.

Finally, this Amendment also clarifies that merger transactions governed by House Bill No. 330 include only those that involve the beneficial transfer of real estate in Delaware.

This Amendment is effective for all agreements to merge and other indirect dealings in intangible interests subject to formal written agreements entered into on or after 1:30 pm on January 26, 2006.