

District of Columbia Legislation of Interest to Owners of Real Property in the District

Elimination of Termination Exemption for District of Columbia Unincorporated Business Franchise Tax

Under District of Columbia Code, resident or nonresident limited liability companies and general and limited partnerships (as “unincorporated businesses”) that own real property in the District of Columbia are subject to the District’s 8.25% unincorporated business franchise tax on net income. Prior to January 1, 2021, there was a regulatory exemption to the imposition of the unincorporated business franchise tax on an unincorporated business with respect to any gain (other than ordinary gain resulting from the recapture of depreciation) from the sale or other disposition of assets, including real property, that resulted in the “termination” of the unincorporated business (for example, a sale of all of the entity’s real property and a termination of the unincorporated business as a result thereof). Instead, tax on the gain was imposed by the District of Columbia on the owners of the unincorporated business, to the extent the owners had sufficient nexus with the District of Columbia to be subjected to tax therein. Accordingly, the District’s unincorporated business franchise tax previously did not apply directly to the gain resulting from a limited liability company’s or partnership’s sale of all of its real estate holdings to the extent the sale resulted in the termination of the unincorporated business.

Last fall, the District passed the Unincorporated Business Franchise Tax Amendment Act of 2020, which eliminated this exemption and took effect on January 1, 2021. So now, the District’s 8.25% unincorporated business franchise tax will be imposed directly on a limited liability company, partnership, or other unincorporated business with respect to any gain from the sale of the business’s District of Columbia real property, even if such property constitutes all of the property of the entity located in the District of Columbia.

Careful initial structuring of ownership and of the method of disposition of real property assets could avoid the imposition of this tax in certain instances.

District of Columbia Low Income Housing Tax Credit

The District, in its 2021 budget, established a Low Income Housing Tax Credit equal to 25% of the value of any federal low-income housing tax credit allocation received after October 1, 2021, and which is approved by the District Department of Housing and Community Development on or after October 1, 2021. This additional credit can be taken against District income, insurance premiums, and franchise taxes and may be claimed equally for 10 years, thus providing some additional benefit to properties that are otherwise financed to generate federal low-income housing tax credits.



David Tiger

Member

dtiger@cozen.com
Phone: (202) 912-4899
Fax: (202) 861-1905

Related Practice Areas

- Real Estate