

**OPINION NO. 81-016****Syllabus:**

A conveyance of real property to a partnership by an individual as the individual's contribution to the partnership assets is exempt, pursuant to R.C. 319.54(F)(3)(m), from the real property transfer fee and tax where no consideration other than an interest in the partnership is paid or to be paid for such conveyance.

**To: Lynn C. Slaby, Summit County Pros. Atty., Akron, Ohio**

**By: William J. Brown, Attorney General, March 26, 1981**

I have before me the request of your predecessor for an opinion as to the significance of the change in language in R.C. 319.54(F)(3)(m) resulting from the amendment of that section in 1978. It is my understanding that the concern is whether a conveyance of real property to a partnership by an individual as the individual's contribution to the partnership assets is exempt, pursuant to R.C. 319.54(F)(3)(m), from the real property transfer fee and tax.

In 1978, R.C. 319.54(F)(3) was amended to provide additional exemptions from the transfer fee and tax and to broaden the scope of certain existing exemptions. 1977-1978 Ohio Laws, Pt. II, 3721, 3725 (Sub. H.B. No. 1024, eff. Oct. 9, 1978). R.C. 319.54(F)(3)(m), as amended by Sub. H.B. No. 1024, provides as follows:

(F) The county auditor shall charge and receive fees as follows:

. . .

(3) For receiving statements of value and administering section 319.202 [319.20.2] of the Revised Code, one dollar, or ten cents per hundred dollars for each one hundred dollars or fraction thereof of the value of real property transferred, whichever is greater, except no fee shall be charged when the transfer is made:

. . .

(m) To or from a person when no money or other valuable and tangible consideration readily convertible into money is paid or to be paid for the real estate and the transaction is not a gift; . . . .  
(Emphasis added.)

As noted in the opinion request, prior to its amendment in 1978, R.C. 319.54(F)(3)(m) provided an exemption from the transfer fee and tax when the transfer of real estate was made "[t]o or from a person when no consideration is paid or to be paid for the transfer and the transaction is not a gift." 1975-1976 Ohio Laws, Pt. I, 136, 137-38 (Am. S.B. No. 64, eff. 8/11/76) (emphasis added). It appears that the legislative intent in amending R.C. 319.54(F)(3)(m) was to broaden the scope of the exemption provided therein, and to establish that transfers which are not gifts, but for which consideration other than "valuable and tangible consideration readily convertible into money" is paid or to be paid, are exempt from the transfer fee and tax. Consequently, whether the conveyance described in the opinion request is exempt from the transfer fee and tax pursuant to R.C. 319.54(F)(3)(m) is dependent upon the nature of the transfer and the consideration paid.

I have been advised that the facts and circumstances surrounding the conveyance of the real estate are substantially as follows. Individuals "A" and "B" desire to form a partnership. Individual "B's" contribution to the partnership assets will be \$100,000 in cash. Individual "A" wishes to convey developed land valued at \$100,000 to the partnership as his contribution to the partnership assets. Since no other details of the partnership agreement have been furnished, I will assume, for

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the purposes of this opinion, that the provisions of the partnership agreement are similar to the provisions of R.C. Chapter 1775, the Uniform Partnership Law.

It does not appear from the facts provided in the request that "A" intends to make a gift of the property. A gift is commonly defined as:

a transfer of property to a donee during the life of the donor, for no consideration, with the intention on the part of the donor to divest himself of control or dominion over the subject of the gift, and with no condition imposed thereon to be met by the donee.

National Bank v. Kelly, 19 Ohio Op. 231, 235 (P. Ct. Franklin County 1939). It is my understanding that "A" will receive an interest in the partnership, which he otherwise would not have received, in return for his contribution of real property, and that "A" will retain an interest in, and a right to control, the property as a co-partner in the partnership. See R.C. 1775.24. Thus, in this instance, it appears that consideration, namely, an interest in the partnership, is to be paid to "A" in return for the transfer of his property to the partnership. Consequently, it must be concluded that the conveyance of the property to the partnership would not constitute a gift.

In order to come within the exemption provided for under R.C. 319.54(F)(3)(m), however, it must also be determined that no "valuable and tangible consideration readily convertible into money is paid or to be paid for the real estate." In making such a determination, the language of the exemption must be strictly construed in favor of imposition of the tax and against the exemption. See National Tube Co. v. Glander, 157 Ohio St. 407, 105 N.E.2d 648 (1952); State ex rei. Keller v. Forney, 108 Ohio St. 463, 141 N.E. 16 (1923); 1970 Op. Att'y Gen. No. 70-124; 1965 Op. Att'y Gen. No. 65-165.

The term "valuable consideration" has been defined to mean the acquisition of some legal right, interest, profit or benefit. City Trust & Savings Bank v. Schwartz, 68 Ohio App. 80, 39 N.E.2d 548 (Ct. App. Mahoning County 1940); In Re Knisely's Estate, 27 Ohio Op. 216 (P. Ct. Tuscarawas County 1943). The term "tangible consideration," as used in R.C. 319.54(F)(3)(m), does not appear to have been defined in any court decision. Black's Law Dictionary 1627 (rev. 4th ed. 1968) defines "tangible" as "capable of being touched; also, perceptible to the touch; tactile; palpable, and as being capable of being possessed or realized, readily apprehensible by the mind, real; substantial; evidence." The term "tangible property" has been defined as "that which is visible and corporeal, having substance and body, as contrasted with incorporeal property rights such as franchises and choses in action. . . ." Roth Drugs, Inc. v. Johnson, 13 Cal. App. 2d 720, 134, 570 P.2d 1022, 1028 (3rd App. Dist. 1936).

As previously mentioned, "A" will receive an interest in the partnership to be formed in return for his contribution of real property. The incidents of a partnership interest consist of an interest in, and a right to possess, specific partnership property for partnership purposes (R.C. 1775.23-.24), a right to participate in the management of the partnership business (R.C. 1775.23), and the right to share in the profits and surplus of the partnership (R.C. 1775.25). Consequently, there is no question but that an interest in the partnership constitutes "valuable consideration" as that term is commonly defined.

However, even when the provisions of R.C. 319.54(F)(3)(m) are strictly construed in favor of imposition of the tax and against exemption, it does not appear that the consideration to be received by "A" constitutes "tangible consideration" as used in R.C. 319.54(F)(3)(m). The partnership interest which "A" will receive as consideration for transferring his property to the partnership is not "tangible" in the sense that it is "capable of being touched" or "readily apprehensible to the mind." Rather, the interest which "A" will receive as consideration is intangible, much like a franchise or a chose in action.

Moreover, the partnership interest which "A" will receive as consideration for the transfer does not appear to constitute "consideration readily convertible into money." It cannot be denied that a partnership interest is capable of being converted into money; a partner has a right to share in the profits of the partnership (R.C. 1775.25), and a partner may convey his partnership interest to another, thereby assigning the right to receive profits (R.C. 1775.26(A)). However, as a practical matter, it is not possible to place a monetary value on these incidents of partnership which will be received by "A" as consideration for transferring his property to the partnership. There is no way to determine whether profits will be forthcoming from the operation of the partnership, or whether "A" would be able to receive money in return for assigning his interest to another. Consequently, it must be concluded that the consideration which will be paid to "A," an interest in the partnership, is not "consideration readily convertible into money."

Pursuant to R.C. 319.54(F)(3)(m), a transfer of real property is exempt from the real property transfer fee and tax "when no money or other valuable and tangible consideration readily convertible into money is paid or to be paid for the real estate and the transaction is not a gift" (emphasis added). In the situation posed in the opinion request, valuable consideration, namely, an interest in the partnership, is being paid to "A" for the transfer of his real estate. Since, however, such consideration does not appear to constitute "tangible consideration readily convertible into money," it must be concluded that the transfer of real estate by "A" to the partnership is exempt from the real property transfer fee and tax pursuant to R.C. 319.54(F)(3)(m).

In answer to your question, then, it is my opinion, and you are so advised, that a conveyance of real property to a partnership by an individual as the individual's contribution to the partnership assets is exempt, pursuant to R.C. 319.54(F)(3)(m), from the real property transfer fee and tax where no consideration other than an interest in the partnership is paid or to be paid for such conveyance.