

July , 1999

Re: Ruling Request

Real Property Transfer Tax
FLR-994752-021

Dear :

This letter responds to your request, dated , for a ruling applying the New York City Real Property Transfer Tax (the "RPTT") to the proposed conveyance, described below, of a recorded leasehold interest in commercial real property located (block , lot) (the "Leasehold") by (the "Taxpayer"). This office received additional information relating to this request on , 1999.

FACTS

The facts presented are as follows:

The Taxpayer, a general partnership organized under the laws of New York State, is owned by two general partnerships, . Those partnerships are set up in such a way that six individuals have equal one-sixth shares of the profit, loss, and capital, and voting and distribution rights with respect to the Taxpayer. Those six individuals are: (collectively, the "Partners").

The Partners propose to organize a limited liability company (the "LLC") under the laws of New York State. You have represented that in the LLC as it will be organized, each of the Partners will have an equal one-sixth interest in the profits, losses, distributions, rights upon

dissolution, and voting power with respect to the LLC. You have also represented that the LLC will be taxed as a partnership under federal and state income tax laws.

It is anticipated the Taxpayer will then convey the Leasehold to the LLC in exchange for interests in the LLC.

ISSUE

You have requested a ruling that the Taxpayer's conveyance of the Leasehold to the LLC will be exempt from the RPTT by reason of section 11-2106(b)(8) of the New York City Administrative Code (the "Code").

CONCLUSION

Based upon the facts presented and the representations submitted, we have determined that the Taxpayer's conveyance of the Leasehold to the LLC will be exempt from the RPTT by reason of Code section 11-2106(b)(8).

DISCUSSION

The RPTT applies to each deed conveying an interest in New York City real property, including a leasehold interest, when the consideration for the real property interest exceeds \$25,000. Code § 11-2102(a). Code section 11-2101.9 defines "consideration" as the price paid or required to be paid for the property by money, property, or anything of value. It includes the amount of any indebtedness on the property, whether or not that indebtedness is assumed.

Code section 11-2106(b) exempts from tax certain transactions that would otherwise be subject to the RPTT. Under paragraph (8) of that subdivision, a deed conveying real property that effects a mere change of identity or form of ownership is exempt from the RPTT to the extent that the beneficial ownership of the property remains the same. Implementing that Code section as it applies to conveyances to limited liability companies, subdivisions (iv) and (v) of section 23-03(e)(3) of Title 19 of the Rules of the City of New York ("RCNY") provide that a conveyance of realty to a limited liability company that is treated as a partnership for federal income tax purposes, whether or not the company is an existing company or whether interests in the company are issued in exchange for the realty, is exempt from the RPTT as a mere change of identity or form to the extent the beneficial ownership of the real property remains the same.

In this case, the Taxpayer owns the Leasehold and will convey it to the LLC in exchange for interests in the LLC. You have represented that the LLC will be treated as a partnership for federal and state income tax purposes. Thus, the conveyance will be exempt from the RPTT under subdivisions (iv) and (v) of 19 RCNY section 23-03(e)(3) to the extent the beneficial ownership of the Leasehold after the conveyance remains the same as it was before the conveyance.

Through the ownership of two other partnerships, each of the six Partners has an equal one-sixth share of the profit, loss, and capital, and voting and distribution rights with respect to the Taxpayer. You have represented that in the LLC as it is organized, each of the Partners will have an equal one-sixth interest in the profits, losses, distributions, rights upon dissolution, and voting power of the LLC.

Before the conveyance, each Partner beneficially owns a one-sixth interest in the Leasehold, and after the Leasehold is conveyed to the LLC, each will beneficially own a one-sixth interest in the Leasehold. As a result, the conveyance of the Leasehold by the Taxpayer to the LLC will result in no change in the beneficial ownership of the Leasehold and will be exempt from the RPTT under subdivisions (iv) and (v) of 19 RCNY section 23-03(e)(3) and, thus, under Code section 11-2106(b)(8).

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The Department of Finance reserves the right to verify the information submitted.

Very truly yours,

Devora B. Cohn
Assistant Commissioner
for Legal Affairs

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