

July 17, 2018

Re: Request for a Ruling  
Real Property Tax Law § 420-a Exemption  
FLR-18-4987

Dear \_\_\_\_\_ :

This is in response to your request dated December 19, 2017, on behalf of \_\_\_\_\_, for a letter ruling regarding the application of § 420-a of the Real Property Tax Law (“RPTL”) to two separate and distinct leasehold condominiums to be created out of a three unit condominium located in the Bronx at (the “Property”). On or about March 13, 2018, you submitted a letter via email setting forth additional information concerning the structure of this transaction.

**FACTS:**

The facts that we have relied upon for this letter ruling are based on the aforementioned letters dated respectively, on December 19, 2017, and March 13, 2018, (the “submissions”). At the time of application for exemption, additional documentation may be requested to verify those actions yet to be taken by \_\_\_\_\_ in support of the exemption request.

According to the submissions, \_\_\_\_\_, is a limited liability company formed under the laws of the state of New York on June 20, 2007. The Property is located in the Bronx at \_\_\_\_\_.

On or about October 3, 2008, \_\_\_\_\_, entered into a thirty (30) year lease with \_\_\_\_\_. (“ABC”) to perform certain landlord work including the construction of a one story structure (the “Existing Structure”) and then lease out a portion of the Existing Structure consisting of portions of the cellar, basement and the entire first floor (the “Community Space”). A separate space in the Existing Structure consisting of portions of the cellar and commercial space in the basement was not included in this lease to ABC (the “Commercial Space”).

On or about December 30, 2016, \_\_\_\_\_, entered into a ninety- nine (99) year Memorandum of Lease with \_\_\_\_\_, as the legal tenant and \_\_\_\_\_, as the beneficial tenant (the “Parties”), to lease a portion of the Property consisting of certain residential space which will contain approximately 168 residential dwelling units to be constructed above the Existing Structure, but not the Existing Structure itself (the “Residential Space”). Upon the submission of the Property to a condominium regime, the Parties agreed that the aforementioned Memorandum of Lease would terminate and that \_\_\_\_\_ would convey without any further consideration fee title of the Residential Space to the beneficial tenant. \_\_\_\_\_ or an affiliate will retain title to the Existing Structure.

On or about December 30, 2016, the Parties also entered into a separate Regulatory Agreement with the City of New York acting by and through the Department of Housing Preservation and Development (“HPD”) and the New York City Housing Development Corporation (“HDC”) in connection with the

acquisition, construction and permanent financing of an affordable rental housing development and related facilities to be constructed above the Existing Structure.

On or about August 14, 2017, \_\_\_\_\_, entered into a thirty (30) plus year lease with the \_\_\_\_\_. (“XYZ”) to lease out the Commercial Space.

\_\_\_\_\_ intends to create a three-unit condominium on the Property. The New York State Department of Law issued a no-action letter on April 3, 2017. \_\_\_\_\_ is now in the process of seeking condominium apportionment and approval from the Department of Finance’s Tax Map Unit. The three units will include: (1) the Community Space unit consisting of portions of the cellar, basement and first floor (“Unit 1”); (2) the Commercial Space unit consisting of space in the cellar and the basement (“Unit 2”); and (3) a residential unit occupying the second through ninth floors and consisting of 168 low-income rental apartments (“Unit 3”).

Unit 1 is currently occupied by ABC pursuant to a long term lease and is being used for ABC’s stated charitable purposes. After the submission of the Property to a condominium regime, \_\_\_\_\_ proposes to amend the ABC lease such that the amended ABC lease would have an expiration date of at least thirty (30) years from the date of the recording of the leasehold condominium declaration. \_\_\_\_\_ then proposes to have ABC create a leasehold condominium from Unit 1 of the three unit condominium.

Unit 2 will be occupied by XYZ and used for XYZ’s stated charitable purposes.

After the submission of the Property to a condominium regime, \_\_\_\_\_ proposes to have XYZ create a leasehold condominium from Unit 2 out of the three unit condominium.

**ISSUES:**

Are ABC and XYZ able to create separate leasehold condominiums from two of the units in the three-unit fee condominium.

If they are able to create such leasehold condominiums, are ABC and XYZ eligible for real property exemptions pursuant to RPTL § 420-a.

**CONCLUSION:**

ABC and XYZ are legally permitted to create separate leasehold condominiums from two of the units of the three-unit condominium.

After the creation of their respective leasehold condominiums, ABC and XYZ will be deemed to be the owners of Unit 1 and Unit 2, respectively, and therefore eligible for real property exemptions pursuant to RPTL § 420-a.

**LAW:**

RPTL § 420-a provides a tax exemption for mandatory classes of nonprofit organizations in pertinent part as follows:

[r]eal property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.

Article 9B of the Real Property Law (“RPL”) the “Condominium Act” governs the creation, characteristics and management of condominiums. Specifically § 339-e, of the RPL provides the following relevant definitions:

Subdivision 3. “Common elements” unless otherwise provided in the declaration, mean and include: (a) the land on which the building is located ...and (h) all other parts of the property necessary or convenient to the existence, maintenance and safety or normally in common use...

Subdivision 5. “Common interest” means the (i) proportionate, undivided interest in fee simple absolute, or (ii) proportionate undivided leasehold interest in the common elements appertaining to each unit, as expresses in the declaration...

Subdivision 7. “Declaration” means the instrument by which property is submitted to the provisions of this article, as hereinafter provided...

Subdivision 11. “Property” means and includes the land, the buildings and all other improvements thereon, (i) owned in fee simple absolute, or (ii) in the case of a condominium devoted exclusively to non-residential purposes, held under a lease or sublease, or separate unit leases or subleases, the unexpired term of which on the date of the recording of the declaration shall not be less than thirty years.

Subdivision 14. “Unit” means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway.

Subdivision 16. “Unit owner” means the person or person owning a unit in fee simple absolute or in the case either (i) of a condominium devoted exclusively to non-residential purposes, or (ii) a qualified leasehold condominium, owning a unit held under a lease or sublease.

RPL § 339-f (1) provides that the Act “shall be applicable only to property the sole owner or all the owners of which submit the same to the provisions hereof by duly executing and recording a declaration...”

RPL § 339-g provides that “each unit, together with its common interest, shall for all purposes constitute real property.”

Finally, RPL § 339-y (1) (a) which governs taxation of condominiums, provides in pertinent part that:

With respect to all property submitted to the provision of this article...each unit and its common interest...shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit... except that the foregoing shall not apply to a unit held under lease or sublease unless the declaration requires that the unit owner to pay all taxes attributable to his unit.

### **ANALYSIS:**

proposes to create a three unit condominium on the Property. Initially , a for profit entity, will own Unit 1 and Unit 2, with as the beneficial tenant owning Unit 3. ABC and XYZ are each not-for profit corporations, organized or conducted for charitable purposes, who will lease their respective unit, the unexpired term on the date of the recording of the declaration shall not be less than thirty years. According to the submissions, Unit 1 and Unit 2 will be used respectively, by ABC and XYZ to carry out their stated charitable purposes. then proposes to create two separate leasehold condominiums from two of the three units (Unit 1 and Unit 2) within the original condominium. After the creation of the leasehold condominiums contends that ABC will own the subdivided units of Unit 1 and XYZ will own the subdivided units of Unit 2.

The initial question raised is whether a leasehold condominium can be created out of the original condominium. If the answer to the initial query is in the affirmative, then since RPTL § 420-a specifically requires ownership of real property by a not for profit corporation or association organized for exempt purposes, the subsequent inquiry is whether these leasehold condominiums constitute ownership of real property for purposes of § 420-a of the RPTL.

A “condominium” has been defined as a system of separate ownership of individual units in a multi-unit project. See Susskind v. 1136 Tenant Corp., 251 N.Y.S. 2d 321 (N.Y.C. Civ. Ct 1964); see also Murphy v. State of New York, 787 N.Y.S. 2d 120 (2d Dept. 2004), where the court said that “[i]t is now settled that the condominium form of ownership is manifested as a division of a single parcel of real property into individual units and common elements in which an owner holds title in fee to his individual unit as well as an undivided interest in the common elements of the parcel”

In 1964 New York legalized condominium ownership of property by enacting the Condominium Act (the “Act”). Under the Act a unit owner is the person or person owning a unit in fee absolute or in the case...(i) of a condominium devoted exclusively to non-residential purposes...,owning a unit under a lease or sublease RPL § 339-e (16).

ABC has entered into a lease with that will be amended after the submission of the Property to a condominium regime that will have an expiration date of at least thirty (30) years from the date of the recording of the leasehold condominium declaration. XYZ has entered into a thirty (30) plus year lease with that will have an expiration date of at least thirty (30) years from the date of the recording of the leasehold condominium declaration.

With respect to the issue of whether a leasehold condominium can be created from a unit within a fee condominium, RPL § 339-g provides that each unit, together with its common interest, constitutes real

property. Furthermore, the Condominium Act provides that its provisions are applicable to property submitted by the execution and recording of a condominium declaration. RPL § 339-f (1); 339-e (7). The term “property” is defined to include the land, the buildings and all improvements thereon either owned in fee simple absolute or in the case of a condominium devoted exclusively to non-residential purposes, held under a lease or sublease, or separate unit leases or subleases, the unexpired term on the date of the recording of the declaration is at least thirty years. RPL § 339-e (11). The Condominium Act does not prohibit the creation of a leasehold condominium out of an original condominium unit, but rather appears to provide that a condominium unit would be deemed property that could be submitted to its provisions. Accordingly, it would appear that it would be legally permissible for a unit owner to create a leasehold condominium from units within the original three-unit condominium.

Assuming leasehold condominiums can be created from individual units, the issue is whether ABC and XYZ are deemed owners for purposes of RPTL 420-a. ABC and XYZ will have an ownership interest in their respective subdivided units based upon their 30 plus year leasehold. The leasehold condominium ownership interest for the units will include title to each unit and the unit’s respective common interest, including an undivided percentage interest in the common elements, which includes the underlying leasehold of the land. Moreover, since RPL § 339-g provides that each unit, together with its common interest, constitutes real property, it follows that the underlying leasehold of the land constitute real property for purposes of RPTL § 420-a. Consequently, once the contemplated declarations are filed by both ABC and XYZ, they will be deemed to be the owners of their respective units for the term of the lease, and also have a leasehold interest in the land.

With regard to separate taxation, each of the respective leases provides that the unit owner will be required to pay the taxes assessed on its unit. Pursuant to RPL § 339-y (1) (a) each unit and its common interest is deemed to be a tax parcel. Accordingly, the tax parcel, which is subject to assessment, will consist of the unit and its common interest including the leasehold of the land. As a result, the Department of Finance will assess each unit together with its common interest in the leasehold as a single tax parcel. Hence, ABC and XYZ as the respective owners of Unit 1 and Unit 2 on the original three unit condominium will be assessed the full value of each unit, which will include the unit’s pro rata share of all of the common elements, of the three unit condominium, one of which is the land.

RPTL § 420-a provides an exemption for real property owned by a corporation or association organized or conducted for an exempt purpose provided the property is used to carry out such exempt purpose. Consequently, a not for profit that does not own the property but is merely a lessee pursuant to a long term lease is not eligible for an exemption. However, we have determined that ABC and XYZ as the respective owners of two leasehold condominium units with a term of 30 plus years or more is eligible for exemption from taxation pursuant to RPTL §420-a.

To receive its exemption both ABC and XYZ will be required to file an application with the Exemption Unit. If the documents and facts presented at the time of the application are consistent with the representations made to Legal Affairs for the purposes of this letter ruling, the tax parcels consisting of the subdivided leasehold condominium units and their respective common interests should be granted an exemption pursuant to RPTL § 420-a.

Notwithstanding the analysis and conclusions discussed above, the Department of Finance reserves the right to review the information submitted.

Very truly yours,

Diana Beinart  
Deputy Commissioner