



Department of Finance

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Diana Beinart
General Counsel/Deputy
Commissioner

March 30, 2022

XXXXXX
c/o XXXXXX
XXXXXX
XXXX, XXXX XXXX

**RE: Request for Letter Ruling
Real Property Transfer Tax
FLR 22-5015**

Dear Taxpayer:

This is in response to your request dated January 20, 2022 and received by our office on January 27, 2022 for a letter ruling regarding the application of the New York City Real Property Transfer Tax (the “RPTT”) to the set of facts described below. You have submitted the following documents with your request: (1) Certificate of Formation and Operating Agreement for XXXXXX; (2) Certificate of Formation and Operating Agreement for XXXXXX; (3) Certificate of Formation and Operating Agreement for XXXXXXXX; (4) Organizational Charts; and (5) Copy of Statement of Audit Procedure RPTT-2008-03.

FACTS

The pertinent facts presented are as follows:

XXXX (“Taxpayer” or “Trust”) was formed by The Corporation Trust Company (“Delaware Trustee”) and XXXXXX (“Administrative Trustee”) as a statutory trust pursuant to and in accordance with the Delaware Statutory Trust Act by the filing of the Certificate of Trust with the Delaware Secretary of State on XXX XX, 2021. Subsequently, XXXXXX (“Beneficiary”) made a capital contribution to the Taxpayer in exchange for a 100% membership interest in the Taxpayer.

On XXX XX, 2021 XXXXXXXX (“Interim Titleholder”) was formed with a sole member, Beneficiary. The Certificate of Formation states that the entity “is formed for the sole purpose of

acquiring title to property for the benefit of [Taxpayer], subject to the terms and conditions of the Trust Agreement¹ thereof.”

The Operating Agreement of Interim Titleholder (“Operating Agreement”), executed XXX XX, 2022, states that its

“...business and purpose shall be limited to acquiring and holding bare legal title to the Real Estate² on behalf of the Trust, for the sole and exclusive purpose of causing the private placement of interests in the Trust pursuant to the Private Placement Memorandum³ to satisfy the “dummy/strawman” exemption from the New York City Real Property Transfer Tax... as set forth in Statement of Audit Procedure RPTT-2008-03...”

The Operating Agreement further states that the Interim Titleholder shall terminate on the earlier of (1) the completion of the private placement of Interest in the Trust pursuant to the Private Placement Memorandum; and (2) the first anniversary of the acquisition of the Real Estate. Upon such termination the Interim Titleholder shall transfer its interest in bare legal title to the Real Estate to the Taxpayer pursuant to a merger of the Interim Titleholder with and into the Taxpayer, with the Taxpayer being the surviving entity.

On XXXXX XX, 2022, an Amended and Restated Trust Agreement of the Taxpayer/Trust (the “Trust Agreement”) was made by and among Beneficiary, Delaware Trustee, Administrative Trustee and the Interim Titleholder. The agreement states that the Interim Titleholder “on behalf of the Trust, will acquire real estate and improvements as shall be designated by the Beneficiary, which shall be located in Manhattan County, New York, New York” (the “Real Estate”). The agreement further states that the Interim Titleholder

“...shall be limited to holding bare legal title to the Real Estate on behalf of the Trust, for the duration and pursuant to the terms of the Trust Agreement, for the sole and exclusive purpose of causing the private placement of Interests pursuant to the Private Placement Memorandum⁴ to satisfy the “dummy/strawman” exemption from the New York City Real Property Transfer Tax... as set forth in Statement of Audit Procedure RPTT 2008-03...”

Under the Trust Agreement the Trust, the Administrative Trustee, and the Interim Titleholder each represent and warrant the following:

¹ Refers to the Trust Agreement of the Taxpayer/Trust.

² Real Estate is defined within the Operating Agreement as “the real estate and improvements to be acquired by the [Interim Titleholder] on behalf of the Trust located in Manhattan County, New York, New York.”

³ Private Placement Memorandum is defined in the Operating Agreement as “the memorandum and related documents distributed to prospective Investors in the Trust that provides such Persons with information relating to an investment in the Trust.”

⁴ The term Private Placement Memorandum is defined in the Trust Agreement the same as in the Operating Agreement.

- (a) The Trust Agreement has been entered into prior to the acquisition of the Real Estate by or for the benefit of the Trust.
- (b) The sole purpose of the provisions of this Trust Agreement concerning the Interim Titleholder is to facilitate the Trust's acquisition of the Real Estate.
- (c) The Interim Titleholder is acting pursuant to the Trust Agreement on behalf of and for the benefit of the Trust and the Administrative Trustee.
- (d) Upon the acquisition of bare legal title to the Real Estate by the Interim Titleholder, such Trustee shall act with respect to the Real Estate solely as directed by the Administrative Trustee.
- (e) The Interim Titleholder shall have no discretionary authority or responsibility with respect to the Real Estate.
- (f) In addition to the indemnification of the Interim Titleholder provided for in Article VIII of the Trust Agreement, the Trust shall indemnify and hold harmless the Interim Titleholder from any losses, expenses or damages resulting from the actions of the Interim Titleholder pursuant to the Trust Agreement.
- (g) Upon the first to occur of: (1) the completion of the private placement of Interest in the Trust pursuant to the Private Placement Memorandum; and (2) the first anniversary of the acquisition of the Real Estate, the Interim Titleholder shall transfer its interest in bare legal title to the Real Estate to the Trust pursuant to a merger of the Interim Titleholder within and into the Trust, with the Trust surviving such merger.

As of this letter ruling issuance, the real estate to be acquired has not been identified and therefore there are no executed financing documents or syndications documents in existence. Taxpayer represents that any future financing documents will allow for the interim ownership of bare legal title to the Real Estate by the Interim Titleholder for the duration of the syndication of beneficial interests in the Taxpayer (or one year from the Taxpayer's acquisition of the Real Estate, whichever is less). Taxpayer represents that any future syndication documents will accurately reflect the role of the Interim Titleholder as the holder of bare legal title to the Real Estate for the benefit of the Trust for no longer than the lesser of the duration of the syndication or the first anniversary of the acquisition of the Real Estate.

ISSUE

Whether the described transaction and submitted documents would qualify for the "dummy/straw man" exemption from the RPTT found under New York City Administrative Code (the "Code") section 11-2108(b)(7)?

CONCLUSION

Based upon the facts presented and the representations made we conclude that the transaction and documents would allow the transfer to be exempt from the RPTT as a "dummy/straw man" transaction.

DISCUSSION

Under the Code, the RPTT is imposed on the conveyance of real property or the transfer of an economic interest in real property located in the city where the consideration for the conveyance or transfer exceeds \$25,000. However, Code section 11-2106(b)(7) provides an exemption for “[a] deed, instrument, or transaction conveying or transferring real property or an economic interest therein from a mere agent, dummy, straw man or conduit to his principal or a deed, instrument, or transaction conveying or transferring real property or economic interest therein from the principal to his agent, dummy, straw man or conduit.”

Statement of Audit Procedures RPTT-2008-03 (“SAP”), dated 4/10/08, issued by the Department of Finance provides guidance to auditors examining a transaction in which the taxpayer has claimed the “dummy/straw man” exemption from the RPTT. If properly structured and documented the transfer of the property by a nominee to the owner/principal will qualify for the exemption.

The SAP lists the documentation the auditor will request when examining the transaction. Presently, all have been submitted except for the syndication documents and the loan/financing documents. The Trust Agreement, the Operating Agreement and the Certificate of Formation for the Interim Titleholder meet the requirements set out in the SAP, and in some instances specifically reference the SAP and the intention to meet the requirements set out in it in order to qualify for the “dummy/straw man” exemption.

At this time, the real property has yet to be identified, other than it’s “real estate and improvements to be acquired by the [Interim Titleholder] on behalf of the Trust located in Manhattan County, New York, New York” as defined within the Trust Agreement and Operating Agreement. For purposes of identifying the property within the nominee or agency agreement, as required in the SAP, we find that the description used in the Trust and Operating Agreement is sufficient to identify the property for purposes of qualifying for the “dummy/straw man” exemption.

Additionally, because the specific piece of property has yet to be identified, financing and syndication document do not currently exist. Documents relating to any financing provided by lenders in connection with the acquisition of the property by the nominee should acknowledge the beneficial ownership by the owner/principal. These financing documents should provide that such financing is for the limited period of the syndication and that it will be repaid out of the proceeds of the syndication and/or any permanent financing following the transfer of the property from the nominee to the owner/principal. The syndication documents should describe the transaction, particularly the nominee arrangement, consistent with the provisions of the nominees or agency agreement and the characterization of the transaction as a “dummy/straw man” transaction. You have represented in your submission that the financing and syndication documents will meet these requirements as set out in the SAP.

We conclude upon review of the submitted documents and if the future financing and syndication documents are consistent with the representations made in this submission and with the SAP, the described transaction will qualify for the “dummy/straw man” exemption from the

RPTT. Any other documents executed in connection with the acquisition of the property and the syndication, such as the deed, the contract of sale or any assignment of the contract, should be consistent with the provisions in the nominee/agency agreement and the characterization of the transaction as a “dummy/straw man” transaction.

The Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Sincerely,

Diana Beinart
General Counsel

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