



## Department of Finance

Legal Affairs Division  
375 Pearl Street, 30<sup>th</sup> Floor  
New York, NY 10038  
Tel. 212.748.4680  
Fax 212.748.6981

Diana Beinart  
General Counsel/Deputy  
Commissioner

September 20, 2022

XXXXXX  
XXXXXX

**RE: Request for Letter Ruling  
Commercial Rent or Occupancy Tax  
FLR 22-5018**

Dear XXXX:

This is in response to your request dated April 7, 2022, requesting a ruling as to whether membership fees paid to use the taxpayer's workspace for work or business is the equivalent of subtenant rent, and are therefore deductible from the taxpayer's base rent for purposes of the New York City Commercial Rent or Occupancy Tax (hereinafter referred to as the "CRT").

### **FACTS**

The taxpayer operates a members-only workspace where paying members utilize offices, desks, meeting rooms, and collaborative spaces. The workspace is used by members to carry on or exercise a trade, business, profession, vocation, or commercial activity and is equipped with various tools, technology, furniture, and equipment.

The taxpayer provides four levels of membership:

- 1) XXXXXXXX Membership – Includes daily access to shared spaces, use of desks and access to events. Excludes the use of storage spaces and access to other designated storage.
- 2) XXXXXX Membership – XXX members reserve desks in an open floor plan on a month-to-month basis. XXXXX Membership includes lockable storage.
- 3) XXXXXX Membership – XXXXX members can reserve an enclosed space. This space includes chairs, desks, and a flat screen. The enclosed space can be booked on a daily and/or monthly basis.

- 4) XXXXXXXXX Membership – XXXXXX members reserve a private office space. This includes desks, chairs, and storage cabinets. XXXX members receive a card that locks and unlocks the door to the office. The XXXX membership requires a security deposit equal to one month’s membership fee.

All membership types also include the following: access to the taxpayer’s app to connect with a community of members, private phones areas, kitchen/pantry access, weekly happy hours, bookable meeting rooms, break-out spaces, printing and paper shredding services, video conferencing, allotted guest passes, complimentary beverages, and snacks.

Upon joining, members agree to the taxpayer’s terms and conditions. These terms and conditions provide that use of the taxpayer’s facilities does not create a tenancy, lease, or other real property interest in the member’s favor with respect to any of the taxpayer’s premises. Members acknowledge and agree that they shall not be provided with exclusive possession of any part of the premises and in the case of XXXX or XXX Memberships, that the taxpayer shall have the right to enter at any time and to relocate members to alternative locations within the same premises provided it shall not do so in a manner that decreases the square footage of such members’ designated space.

## **ISSUE**

Are membership fees paid by members for business or work purposes considered subtenant payments, and if so, may the taxpayer deduct the membership fees from base rent for purposes of the CRT?

## **CONCLUSION**

We have determined, under the facts and circumstances presented, that the taxpayer may reduce its base rent by the portion of membership fees paid by its members for the use or occupancy of the space for trade, business, professional or commercial activity for more than fourteen days in a tax year.

## **DISCUSSION**

The CRT is imposed on tenants who occupy or use property in Manhattan south of 96<sup>th</sup> Street for the use of trade, business, professional or commercial activity and pay annual or annualized gross rent of at least \$250,000, unless they meet any of the exceptions found under the statute.<sup>1</sup>

Base rent is defined as the rent paid for each taxable premises by a tenant to his or her landlord for a period reduced by the amounts received by or due such tenant for the same period from any subtenant of any part of such premises.<sup>2</sup> Taxable premises are those premises in the city occupied, used, or intended to be occupied or used for the purpose of carrying on or exercising

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<sup>1</sup> NYC Ad. Code Sections 11-702(a) and 11-704.

<sup>2</sup> NYC Ad. Code Section 11-701(7).

any trade, business, profession, vocation or commercial activity.<sup>3</sup> A tenant is a person paying or required to pay rent for premises as a lessee, sublessee, licensee or concessionaire.<sup>4</sup> A licensee is someone who has permission to enter or use another's premises.<sup>5</sup>

In general, the New York City Administrative Code ("Ad. Code") allows a deduction from base rent in the amount received as rent from a subtenant for such premises which constitute taxable premises of the subtenant.<sup>6</sup> A taxpayer is eligible for the subtenant deduction with respect to rent paid by a subtenant for taxable premises that are exempt from CRT because its base rent is less than \$250,000, but ineligible for the subtenant deduction with respect to rent paid by such subtenant if the subtenant is exempt from CRT because it uses the premises for a de minimus period of no more than fourteen days in a tax year.<sup>7</sup>

For the taxpayer's membership fees to be eligible for the subtenant deduction, it must be found that the membership fees qualify as rent paid by a tenant. Pursuant to the taxpayer's terms and conditions of membership, membership does not create a tenancy, lease, or other real property interest in the member's favor. Therefore, the members are not paying rent as a lessee or sublessee. However, the Ad. Code also allows for a subtenant deduction for rent paid by a licensee. Licensees are persons given permission to enter and use the taxpayer's premises. Here, the members are paying for permission to enter and use the taxpayer's premises for trade, business, professional, or commercial activity. Therefore, because the members are paying consideration for the use of the taxpayer's premises as a licensee, the taxpayer may reduce its base rent by the portion of membership fees paid by its members for the use or occupancy of the space for trade, business, professional or commercial activity for more than fourteen days in a tax year.

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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<sup>3</sup> NYC Ad. Code Section 11-701(5).

<sup>4</sup> NYC Ad. Code 11-701(3).

<sup>5</sup> Black's Law Dictionary (11th ed. 2019).

<sup>6</sup> NYC Ad. Code Section 11-701(7)(i).

<sup>7</sup> NYC Ad. Code Section 11-701(7)(i).