



FINANCE  
NEW • YORK  
THE CITY OF NEW YORK  
DEPARTMENT OF FINANCE

March 29, 2004

Re: Request for Ruling  
Commercial Rent Tax  
FLR#044821-007

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

This letter is in response to your request received on February 2, 2004 for a ruling regarding the application of the Commercial Rent Tax ("CRT") to the hypothetical facts discussed below. Additional information was received on February 19, 2004.

FACTS

You have represented that the hypothetical facts presented in this ruling request involve the hypothetical transaction that was the subject of FLR#024796-007. All defined terms not defined herein have the same meaning as in that ruling. Under the hypothetical facts of the prior ruling, a Trust was to act as the ground lessee under the Ground Lease and as Lessor under the Lease of the Improvements to be constructed on the real property. An LLC formed by Parent was to act as lessee under the Lease and would be responsible for constructing those Improvements. As a result of certain subsequent changes in financial accounting rules affecting the financial reporting of lease transactions such as the Lease, an unrelated third-party bank (the "Bank") will purchase at face value all of the Trust's Certificates from the holders of the Certificates. Next, the Bank will dissolve the Trust and assume all of the Trust's obligations under the Lease and Ground Lease. Accordingly, the Bank will be the ground lessee under the Ground Lease and Lessor of the Improvements under the Lease. Also, to finance the purchase of the Certificates, the Bank will issue additional B1 Notes ("Additional Notes") with a principal amount and issue price equal to the face amount of the Certificates. Further, the Bank and the LLC will extend the term of the Lease and the maturity of all of the Notes approximately 15 months to a date that is five years from the date that the Bank replaces the Trust as Lessor under the Lease and ground lessee under the Ground Lease. In all other significant respects, the hypothetical facts presented in FLR#024796-007, including the obligations of LLC under the Lease, are unchanged.

## ISSUE

In FLR#024796-007, we determined that the CRT would not apply to the payments made by LLC to or for the benefit of the Trust, as Lessor, under the Lease, including payment of real estate taxes by LLC on the Improvements, other than payments made under the Ground Lease directly to the Ground Lessor. You have requested a ruling that the substitution of the Bank for the Trust as Lessor under the Lease and as ground lessee under the Ground Lease, will not affect the conclusions of that prior ruling.

## CONCLUSIONS

Based on the additional hypothetical facts presented and the representations submitted, we have determined that the substitution of the Bank for the Trust as Lessor under the Lease and as ground lessee under the Ground Lease, will not affect the overall analysis or conclusions of FLR#024796-007.

## DISCUSSION

The CRT is imposed on rent paid by a tenant who occupies, uses, or intends to occupy or use premises in New York City for “carrying on or exercising any trade, business, profession, vocation or commercial activity.” Sections 11-701(5), 11-701(7) and 11-702(a) of the Administrative Code of the City of New York (the “Code”). Under Code section 11-701(6), rent is defined as “the consideration paid or required to be paid by a tenant for the use or occupancy of the premises...”, and includes “any payments required to be made for tenant on behalf of his or her landlord for real estate taxes, water rents or charges, sewer rents or any other expenses (including insurance) normally payable by a landlord....” The Code defines tenant as a “person paying or required to pay rent for premises as a lessee, sublessee, licensee, or concessionaire.” Code § 11-701(3). The owner of a building is not considered a “tenant” for the purposes of the CRT. *See* Title 19 of the Rules of the City of New York § 7.01.

In FLR#024796-007, we concluded that the substance of this transaction was a financing arrangement and not a true lease. The substitution of the Bank for the Trust as Lessor under the Lease of the Improvements and as ground lessee under the Ground Lease, the Bank’s purchase of the Certificates and issuance of Additional Notes with a principal amount and issue price equal to the face amount of the Certificates, and the extension of the term of the Lease and the maturity of all of the Notes do not alter the conclusion that the transaction is a financing arrangement and not a true lease. LLC retains the same control over the property, risk of loss and potential benefit of gain that it had in FLR#024796-007. In addition, the fixed rental payments under the Lease are still based on the amount needed to pay interest on the Notes (including the Additional Notes), rather than the fair rental value for a lease of the Improvements. Further, the Purchase price remains based on the amount necessary to retire the Notes (including the Additional Notes), not the fair market value of the Improvements at the time of the purchase.

You have also represented that, as was the case with the Trust, for federal, state and local income tax reporting purposes, none of the parties, including the Parent, LLC, the Bank or the holders of

the Notes will treat the Bank as the owner of the Property or the issuer of the Notes (including the or Additional Notes) or of the Certificates. Therefore, the tax reporting and other actions of the parties will continue to be consistent with the substance of the transaction.

Therefore, in the opinion of the Department, the additional facts presented will not affect the conclusions reached in FLR#024796-007.

Sincerely,

Ellen E. Hoffman  
Assistant Commissioner for Tax Law and Conciliations