

November 10, 2005

Re: Request for Exemption  
Real Property Transfer Tax

FLR-054840-021

Dear :

This letter responds to your request dated October 7, 2005, for an exemption from the New York City Real Property Transfer Tax (the "RPTT") for the transfer by the (the "Taxpayer") to the (the "Grantee") of property located at , in Brooklyn, (the "Property").

#### FACTS

The facts presented are as follows:

The Grantee is a private foundation that was been determined by the Internal Revenue Service (the "IRS") to be exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code in 1973. The IRS confirmed that exempt status by a letter dated January 27, 2005.

The Taxpayer transferred the Property to the Grantee by a deed dated May 10, 2005.

#### ISSUE

You have requested a ruling that the RPTT will not be imposed upon the transfer of the Property by the Taxpayer to the Grantee by reason of section 11-2106(b)(2) of the New York City Administrative Code (the "Code").

#### CONCLUSION

Based upon the facts presented and the representations submitted, we have determined that Code section 11-2106(b)(2) applies to the transaction. Thus, the transfer of the Property by the Taxpayer to the Grantee will be exempt from the RPTT.

## DISCUSSION

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

Code section 11-2106(b) exempts certain deeds, instruments, and transactions from the RPTT. When that section applies both the grantor and the grantee are exempt. Code section 11-2106(b)(2) exempts conveyances of real property by or to any corporation:

organized and operated exclusively for religious, charitable, or educational purposes, . . . and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph. . . .

Code section 11-2106(b)(2) closely resembles IRC section 501(c)(3), which exempts certain religious, charitable, and educational organizations from federal income tax. Code section 11-2106(b)(2) does not expressly require an organization to have received a federal exemption under IRC section 501(c)(3) to be exempt from the RPTT. However, because of the substantial similarity between the IRC and Code provisions, this Department takes the position that an organization exempt from tax under IRC section 501(c)(3) will be considered exempt under Code section 11-2106(b)(2).

Based upon the fact that the IRS granted the Grantee an exemption under IRC section 501(c)(3) in 1973 and confirmed that status in 2005, it is the opinion of this office that the Grantee satisfies the requirements for exemption under Code section 11-2106(b)(2). Thus, the RPTT will not be imposed upon the transfer of the Property by the Taxpayer to the Grantee. However, notwithstanding the exemption hereby granted pursuant to this ruling, the Taxpayer must report the transfer on form NYC-RPT and should attach a copy of this ruling to that return.

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

Very truly yours,

Ellen E. Hoffman  
Assistant Commissioner for Tax Law & Conciliations