



FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
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July 27, 2007

RE: Ruling Request
Real Property Transfer Tax
FLR: 074864-021

Dear Mr. _____ :

This letter responds to your request, dated January 16, 2007, on behalf of _____ (the "Taxpayer") for a ruling regarding the application of the New York City Real Property Transfer Tax (the "RPTT") to the proposed transactions described below. This office received additional information concerning this request on April 2, 2007.

FACTS

The facts presented are as follows:

The Taxpayer, located at _____, is a corporation formed in 1878 pursuant to the Religious Corporation Law, with a restated certificate of incorporation executed and filed in _____. By a letter dated _____, the Internal Revenue Service granted the Taxpayer an exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

On _____, the Taxpayer purchased 1365 shares (the "Shares") of the _____, a cooperative housing corporation (the "Cooperative") and received the proprietary lease appurtenant to apartment _____ (the "Lease"), in the building located at _____ (the "Building"). The Taxpayer acquired the shares and lease to provide housing for the Taxpayer's current and future religious officials. Since its acquisition, the Apartment has been occupied by an Associate Rabbi of the _____, _____ (the "Occupant"), and his immediate family.

A condominium plan, the _____ (the "Condominium"), was adopted with respect to the Building. The Cooperative is the owner of certain condominium units, including the Apartment, which is designated as lots and _____ in block _____.

As in a typical cooperative housing corporation, the Cooperative has title to the units. The Taxpayer, as other owners of apartments, owns shares in the Cooperative, the Shares, and has received a proprietary lease to the Apartment, the Lease. The Shares and the Lease grant the Taxpayer full rights to occupy the unit and no right to occupy any other unit in the Cooperative. The Taxpayer is responsible for upkeep of the Apartment, and enjoys the right to dispose of the unit. Part of the building, considered to be common property, such as the lobby and the elevators, can be used by all the apartment owners. The Cooperative has

a mortgage on the common property and pays the interest, and as owner of the units, it also pays real estate taxes. The Cooperative charges the Taxpayer and other unit owners a monthly maintenance, which includes the unit owner's pro rata shares of the real property taxes and the mortgage interest. The unit owners are able to treat their allocated shares of both that mortgage interest and the real property taxes as deductible for federal, state, and local income tax purposes.

Pursuant to the Cooperative's amended offering plan, the owner of a cooperative apartment may elect to convert to condominium ownership by exchanging its shares and proprietary lease with the Cooperative for a condominium deed. That plan permits a non-resident owner of a unit to exchange its shares and lease for a condominium deed only if it agrees to indemnify the Cooperative for any federal, state, and local taxes the Cooperative may incur as a result of the exchange. For those purposes, the Taxpayer is treated as a non-resident, even though it is its intention that the Occupant would remain in the Apartment following its conversion to a condominium. To avoid being burdened by the indemnification agreement, the Taxpayer proposes the following transactions:

1. The Taxpayer would transfer the Shares to the Occupant for a nominal amount. The Occupant would then enter into a lease with the Cooperative. As owner of the Shares and lessee on the Lease, the Occupant would have the same rights to the Apartment as the Taxpayer had before the transfer.
2. The Occupant would exchange the Shares and an amount determined by the holder of a mortgage on the Cooperative's property as the price for the release of the property from the lien of the mortgage for a condominium deed to the Apartment (the "Deed").
3. The Occupant would deliver the Deed to the Taxpayer.

Following those transactions, the Taxpayer would own the Deed. Thus, the result of the three transactions is the same as if the Taxpayer had directly exchanged the Lease for the Deed.

ISSUES

You have requested the following rulings:

1. The Taxpayer's proposed transfer of the Shares to the Occupant for a nominal amount would be exempt from the RPTT as a transfer by an exempt organization by reason of section 11-2106(b)(2) of the New York City Administrative Code (the "Code").
2. The Occupant's proposed exchange of the Shares to the Condominium for the Deed would be exempt from the RPTT as a mere change of form exempt from the RPTT by reason of section 11-2106(b)(8).
3. The Occupant's proposed conveyance of the Deed to the Taxpayer would be exempt as a transfer to an exempt organization by reason of section 11-2106(b)(2).

CONCLUSIONS

Based upon the facts presented and the representations submitted, we conclude as follows:

1. The Taxpayer's proposed transfer of the Shares to the Occupant for a nominal amount would be

exempt from the RPTT as a transfer by an exempt organization by reason of Code section 11-2106(b)(2).

2. The Occupant's proposed exchange of the Shares for the Deed would be exempt from the RPTT as a mere change of form exempt from the RPTT by reason of section 11-2106(b)(8).

3. The Occupant's proposed conveyance of the Deed to the Taxpayer would be exempt as a transfer to an exempt organization by reason of section 11-2106(b)(2).

DISCUSSION

The RPTT applies to each a transfer or conveyance of New York City real property or an interest therein when the consideration for the real property interest exceeds \$25,000. Code section 11-2102(a). Code section 11-2106(b) exempts from tax certain transactions that would otherwise be subject to the RPTT. When that section applies both the grantor and the grantee are exempt. Under paragraph (2) of that subsection, a transfer or conveyance of real property or an interest therein by or to any corporation "organized and operated exclusively for religious, charitable, or educational purposes" can be exempt from the RPTT. And under paragraph (8) of that subsection, a transfer or conveyance of real property or an interest that effects a mere change of identity or form of ownership is exempt from the RPTT to the extent that the beneficial ownership of the property remains the same.

In this case, the Taxpayer has proposed three transfers of real property or an interest therein: Each transfer would be subject to tax unless an exemption to the RPTT applied.

1. The Taxpayer would transfer the Shares to the Occupant for a nominal amount. The Occupant would then enter into a lease with the Cooperative. As owner of the Shares and lessee on the Lease, the Occupant would have the same rights to the Apartment as the Taxpayer had before the transfer.
2. The Occupant would exchange the Shares for the Deed. The Taxpayer would also pay an amount determined by the holder of a mortgage on the Cooperative's property as the price for the release of the property from the lien of the mortgage.
3. The Occupant would deliver the Deed to the Taxpayer.

The Taxpayer's transfer of the Shares to the Occupant. The Taxpayer, an organization exempt from federal income tax under IRC section 501(c)(3) would transfer the Shares to the Occupant for a nominal amount. 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 Taxpayer an exemption under IRC section 501(c)(3) in 1974, it is the opinion of this office that the Taxpayer satisfies the requirements for exemption under Code section 11-2106(b)(2). Thus, the RPTT would not be imposed upon the transfer of the Apartment by the Taxpayer to the Occupant.

The Occupant's exchange of the Shares for the Deed. The Occupant would exchange the Shares and an amount determined by the holder of a mortgage on the Cooperative's property for the Deed. Before the exchange, he would own shares to a corporation that owns the building and have a Lease to the Apartment; following the exchange he would own the Apartment by reason of the Deed.

Code section 11-2106(b) provides that a transfer or conveyance of real property or an interest therein that effects a mere change of identity or form of ownership is exempt from the RPTT to the extent that the beneficial ownership of the property remains the same. Under section 23-05(b)(8)(iv) of title 19 of the Rules of the City of New York (the "RCNY"), the determination of the beneficial ownership of real property before a transaction and the extent to which the beneficial interest remains the same following the transaction, will be based on the facts and circumstances.

In determining beneficial ownership of real property, property held by a corporation is considered to be beneficially owned by its shareholders, as illustrated by the following example in 19 RCNY section 23-05(b)(8):

Example A: A and B, two equal tenants-in-common of parcel 1, transfer their interests in parcel 1 to X corporation on January 1, 1995, each receiving 50% of the outstanding stock of X. The transfer is wholly exempt from tax as a mere change in identity or form of ownership or organization because the beneficial ownership of the real property remains 100%, the same as before the transfer.

Similarly, in this case the Occupant would transfer shares of a corporation that owns the Apartment for a deed to the Apartment. This differs from Example A above only in the respect that the shares represent only a portion of the outstanding stock of the corporation rather than all its stock, and the Apartment similarly represents a portion of the real property owned by the corporation. As a result, the conclusion of Example A will apply if the Shares and the Lease represent beneficial ownership of the property interest covered by the deed, that is the Apartment.

It is well established that the party that enjoys the benefits and bears the burdens of ownership is the beneficial owner, whether or not the party has legal title to the property. See, e.g., Frank Lyon Co. v. United States, 308 U.S. 252 (1958); Rev. Rul. 68-590, 1968-2 C.B. 66, Eastman Kodak Co., TSB-A-90(8)S (March 12, 1990). The facts presented show that, as the owner of the Shares and the holder of the Lease, the Occupant would have a beneficial interest in the Apartment. For example: the Lease would grant the Occupant full rights to occupy the unit and no rights to any other unit in the Cooperative; the Occupant must pay for the shares and upkeep of the Apartment, and enjoys the right to dispose of it unit; the Occupant must pay for the shares and upkeep of the apartment, and enjoys the right to dispose of the unit; the Cooperative charges the apartment owners a monthly maintenance, which includes the owners' pro rata shares of the real property taxes and the mortgage interest, and the apartment owners are able to treat their allocated shares of both that mortgage interest and the real property taxes as deductible for federal, state, and local income tax purposes; the apartment; and the common property, such as the lobby and the elevators, can be used by all the apartment owners.

Following the transfer, the Occupant would have a deed to the Apartment. The Deed includes a shared property right to the common areas, with the result that the owner owns those interests directly rather than through a corporation. Real property taxes, including those on the common property would be charges directly to the Occupant rather than through a corporation. The Occupant's benefits and burdens of the owning the Apartment would be the same as when the Apartment was owned by the Cooperative.

The New York State Department of Tax has reached similar conclusions in applying the same exemption in situations in which a transfer involved a specific property among other properties held by an entity in the context of the New York State Real Property Gains and Transfer taxes. For example, in 115 Spring Street Company, TSB-94(3)-R (March 30, 1994) a partnership, with four equal partners, owned a building that included four residential units. The partnership agreement specified which residential unit in the building was to be occupied by each of the partners. The Building was converted to a condominium, with the four residential units being owned as a cooperative housing corporation. Each of the four partners would receive shares in that corporation allocated to the unit it had previously occupied. Although the partnership had owned all the units before the conversions, the Department found that each partner, held a beneficial interest only in the unit he had occupied under the partnership agreement. As a result, the transfer of the shares allocated to the units occupied by a partner to that partner did not result in a change in beneficial ownership and was exempt from tax as a mere change of form. See also Vacation Village Homeowners Association, Inc., TSB-A-94(6)-R (May 24, 1994) (conversion of homes held within a homeowners association to condominium units exempt as mere change of form); Armory Place LLC, TSB- A-99(3)-R (May 19, 1999); Columbus Centre LLC and its Members, TSB-A-01(3)-R (April 18, 2001).

Based on the representations submitted, the beneficial ownership of the Apartment following the proposed transfer would be the same as the beneficial ownership before the conveyance. Because there would be no change in the Apartment's beneficial ownership as a result of the proposed conveyance, that conveyance would effect a mere change of form and be exempt from the RPTT under Code section 11-2106(b)(8).

The Occupant's conveyance of the Deed to the Taxpayer. As discussed above, the Taxpayer satisfies the requirements for exemption under Code section 11-2106(b)(2). As that section applies to transfers to and from an exempt entity, the RPTT would not be imposed upon the transfer of the Deed by the Occupant to the Taxpayer.

CONCLUSION

Based on the representations submitted, we conclude that the following three transfers are exempt from the RPTT: the Taxpayer's proposed transfer of the Shares to the Occupant, the Occupant's proposed exchange of the Shares with the Cooperative for the Deed, and the Occupant's proposed conveyance of the Deed to the Taxpayer.

In addition to the reasons set out above, our conclusions are supported by the fact that the transactions proposed in this ruling result in the Taxpayer charity exchanging the same property, the Apartment, owned in cooperative form for ownership in condominium form. Had the Taxpayer made that exchange directly, no RPTT would be imposed as a result of the Taxpayer's status as an exempt organization under Code section 11-2106(b)(2). The additional steps were used only to help the Taxpayer reduce other costs of doing the transaction.

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 reserves the right to verify the information submitted.

Sincerely,

Dara Jaffee
Assistant Commissioner
Office of Legal Affairs

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