

December 21, 1998

Re: Request for Letter Ruling
Real Property Transfer Tax
FLR-984737-021

Dear _____ :

This letter is in response to your request, dated _____ for a ruling regarding the application of the New York City Real Property Transfer Tax ("RPTT") to the transactions described below.

FACTS

The facts presented are as follows:

_____, (the "Taxpayer") a general partnership organized under _____ law, currently owns two parcels of commercial real estate located at _____, NY, block _____, lots _____ and _____ and _____, NY, block _____, lot _____. Neither parcel is a cooperative housing dwelling.

The Taxpayer is owned by _____ partners each of which shares equally in all profit, loss, capital, voting and distribution rights. There are _____ individual partners and one partnership partner, _____, (the "Partnership".) The Partnership is a general partnership organized under _____ law. The Partnership is owned by the same individuals that comprise the individual partners in the Taxpayer. Again, all the partners share equally in everything. Consequently, the _____ individual partners hold equal interests in both parcels of real estate.

The Taxpayer proposes to transfer one parcel to one limited liability company ("LLC") and the second parcel to another limited liability company in order to ameliorate personal liability concerns. This will be done in exchange for shares in each LLC and both will be organized under the laws of _____. The Taxpayer will then distribute the LLC shares to its partners equally. The Partnership will distribute the LLC shares it receives to its partners.

After distribution of the shares by the Taxpayer and the Partnership, each LLC will be owned in equal shares by the individual partners of the Taxpayer and the Partnership. The members will possess identical interests to each other, and identical to their interests before the properties were transferred.

ISSUE

You have requested a ruling as to whether the conveyance of these properties and the distributions of interests will be exempt from the RPTT under section 11-2101.8 of the Administrative Code of the City of New York (the "Code") as a mere change in the identity or form of ownership or organization.

CONCLUSIONS

Based on the facts presented and the representations submitted, we have determined that the conveyances are exempt under Code section 11-2101.8 as a mere change of identity or form of ownership or organization.

DISCUSSION

Code Section 11-2102.b imposes a tax on the transfer of an interest in real property or a controlling economic interest in real property when the consideration exceeds \$25,000.

Except with respect to a conveyance to a cooperative housing corporation, a transaction conveying or transferring real property or a controlling economic interest therein that effects a mere change of identity or form of ownership or organization is exempt from the RPTT to the extent the beneficial ownership of the real property or economic interest remains the same as before the transaction. Code § 11-2106. b. 8.

The transfer of each parcel to an LLC formed for the purpose of holding the property in exchange for interests in the LLC will be a transaction subject to the RPTT. In addition, the distribution by the Taxpayer of 100 percent of the LLC shares to its partners will be a transfer of a controlling economic interest in each property.

After distribution of the shares by the Taxpayer and the Partnership, each LLC will be owned in equal shares by the individual partners of the Partnership. The members will possess identical interests to each other, and identical to their interests before the properties were transferred. Therefore, the transfers of the parcels to the LLCs and the

distribution of the LLC shares by the Taxpayer to its partners will be exempt under Code section 11-2106.b(8) as a mere change in form.

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

Very truly yours,

Devora B. Cohn
Assistant Commissioner
for Legal Affairs