

August 23, 2000

Re: Ruling Request  
Real Property Transfer Tax  
FLR-004763-021

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

This letter responds to your request, dated June 30, 2000, for a ruling applying the New York City Real Property Transfer Tax (the "RPTT") to the conveyance, described below, of a leasehold in commercial real property located in \_\_\_\_\_ at \_\_\_\_\_ (block \_\_\_\_\_, lots \_\_\_\_\_ and \_\_\_\_\_) (the "Leasehold") by \_\_\_\_\_ (the "Taxpayer"). The Taxpayer also had a fee interest in the commercial real property that is the subject of the Leasehold. Last year, the Department of Finance issued \_\_\_\_\_, which covered the Taxpayer's conveyance of such fee interest to the same transferee as described herein.

#### FACTS

The facts presented are as follows:

The Taxpayer, a general partnership organized under the laws of \_\_\_\_\_, is owned by three general partnerships, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. Those partnerships are set up in such a way that \_\_\_\_\_ individuals have equal \_\_\_\_\_ shares of the profit, loss, and capital, and voting and distribution rights with respect to the Taxpayer. Those \_\_\_\_\_ individuals are: \_\_\_\_\_ (collectively, the "Partners").

The Partners have organized a limited liability company (the "LLC") under the laws of \_\_\_\_\_. You have represented that each of the Partners has an equal \_\_\_\_\_ interest in the profits, losses, distributions, rights upon dissolution, and voting power of the LLC. You have also represented that the LLC is taxed as a partnership under federal and state income tax laws.

The Taxpayer has conveyed the Leasehold to the LLC in exchange for interests in the LLC.

#### ISSUE

You have requested a ruling that the Taxpayer's conveyance of the Property to the LLC is exempt from the RPTT by reason of section 11-2106(b)(8) of the New York City Administrative Code (the "Code").

#### CONCLUSION

Based upon the facts presented and the representations submitted, we have determined that the Taxpayer's conveyance of the Property to the LLC is exempt from the RPTT by reason of Code section 11-2106(b)(8).

#### DISCUSSION

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

Code section 11-2106(b) exempts from tax certain transactions that would otherwise be subject to the RPTT. Under paragraph (8) of that subdivision, a deed conveying real property 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. Implementing that Code section as it applies to conveyances to limited liability companies, subdivisions (iv) and (v) of section 23-03(e)(3) of Title 19 of the Rules of the City of New York ("RCNY") provide that a conveyance of realty to a limited liability company that is treated as a partnership for federal income tax purposes, whether or not the company is an existing company or whether interests in the company are issued in exchange for the realty, is exempt from the RPTT as a mere change of identity or form to the extent the beneficial ownership of the real property remains the same.

In this case, the Taxpayer owned the Leasehold and conveyed it to the LLC in exchange for interests in the LLC. You have represented that the LLC is treated as a partnership for federal and state income tax purposes. Thus, the conveyance is exempt from the RPTT under subdivisions (iv) and (v) of 19 RCNY section 23-03(e)(3) to the extent the beneficial ownership of the Leasehold after the conveyance remained the same as it was before the conveyance.

Through the ownership of two other partnerships, each of the Partners had an equal share of the profit, loss, and capital, and voting and distribution rights with respect to the Taxpayer. You have represented that each of the Partners has an equal interest in the profits, losses, distributions, rights upon dissolution, and voting power of the LLC.

Before the conveyance, each Partner beneficially owned a interest in the Leasehold, and after the conveyance to the LLC, each beneficially owned a interest in the Leasehold. Accordingly, the conveyance of the Leasehold by the Taxpayer to the LLC resulted in no change in the beneficial ownership of the Leasehold, and is exempt from the RPTT under subdivisions (iv) and (v) of 19 RCNY section 23-03(e)(3) and, thus, under Code section 11-2106(b)(8).

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

Very truly yours,

Devora B. Cohn  
Associate Commissioner  
for Legal Affairs