

June 26, 2001

**Re:** Request for Ruling  
Real Property Transfer Tax  
FLR No.: 014775-021

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

This is in response to your request for a ruling dated April 20, 2001 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:

Prior to the transactions described below, you and your wife, \_\_\_\_\_ (the "Taxpayers") were the owners of \_\_\_\_\_ shares of \_\_\_\_\_ Tenants Corporation (the "Co-op") located at \_\_\_\_\_ that were allocated to Apartment \_\_\_\_\_ (the "Taxpayers' Apartment.") \_\_\_\_\_ (the "Purchaser") was the owner of \_\_\_\_\_ shares of the Co-op that were allocated to Apartment \_\_\_\_\_ (the "Purchaser's Apartment.") The Taxpayers' Apartment and the Purchaser's Apartment are collectively referred to herein as "the Apartments.")

The Purchaser, in contemplation of purchasing the vacant apartment next door to the Taxpayers' Apartment from the estate of a deceased shareholder, offered to exchange his apartment for that of the Taxpayers. The Purchaser intended to combine the vacant apartment purchased from the estate with the Taxpayers' Apartment. On \_\_\_\_\_, 2000, the Taxpayers entered into two contracts with the Purchaser. Under one contract the Taxpayers agreed to convey their shares in the Taxpayers' Apartment to the Purchaser and under the other contract, the Purchaser agreed to convey his shares in the Purchaser's Apartment to the Taxpayers. The transactions were made explicitly interdependent in the contract addenda. Neither contract was to be effective unless a contract for the sale of the other apartment was executed and the Co-op's Board of Directors approved both contracts. The contracts would also be deemed to be rescinded and null and void unless and until the Board approved the Purchaser's application to renovate the Taxpayers' Apartment and combine it with the adjacent apartment. The purchase

price for these conveyances was listed as zero. The terms of the transactions called for no monetary consideration to be paid or received by either party and no mortgage, debt or other indebtedness to be assumed by either party. In the addenda to both contracts, the parties agreed to submit this transaction to this Department as a “no consideration” transaction and if the Department determines that a transfer tax is due, the tax shall be payable based on the value of \$        or such other value as may be determined by “the relevant municipal authorities.”

The Co-op’s Board approved the proposed transactions. In addition, although the Co-op’s by-laws require a “flip tax” of 10 percent of the net profit realized upon a transfer of an apartment appurtenant to the proprietary lease and stock, no flip tax was charged because there was no monetary consideration being paid under either contract. The Apartments were transferred on       , 2000 and RPTT returns were timely filed describing each transfer as a “non-pecuniary transaction.”

## ISSUE

You have requested a ruling that the above transactions are not subject to the RPTT because there was no monetary consideration paid for either apartment.

## CONCLUSION

The RPTT is imposed on the transfer of an interest in real property where the consideration exceeds \$25,000. Based on the facts, the transfers of each of the Apartments were steps in a plan for the Taxpayers and the Purchaser to exchange the Apartments. Where the consideration for a transfer of an interest in real property is received in the form of property, the tax is calculated based on the fair market value of the property received. Therefore, we have determined that the exchange of the Apartments represents two taxable transfers and that the consideration received for the shares allocable to each Apartment is the shares allocable to the other Apartment.

## DISCUSSION

Section 11-2102 of the Administrative Code of the City of New York (the “Code”) imposes a tax on the transfer of real property or an economic interest in real property therein where the consideration exceeds \$25,000. The RPTT also is imposed on the transfer of shares in a cooperative corporation in connection with the grant or transfer of a proprietary leasehold. Code §11-2102.b, paragraphs (2) and (3).

For the purpose of the proper administration of the RPTT and to prevent evasion of the tax, all deeds and transfers of economic interests in real property are presumed to be taxable. Code §11-2103.

For purposes of the tax, the term consideration means the price actually paid or required to be paid for the real property or economic interest therein, without deduction for mortgages, liens and encumbrances, whether or not expressed in the deed or instrument and whether paid or required to be paid by money, property, or any other thing of value. Code §11-2101.9.

Although the Taxpayers and the Purchaser executed two separate contracts of sale for the transfer of their respective apartments, the addenda to both these documents indicate that the transfer of the Taxpayers' Apartment to the Purchaser was contingent on the transfer of the Purchaser's Apartment to the Taxpayer and on the Board's approval of these transfers and the Purchaser's combination of the Taxpayers' Apartment with the adjacent apartment. Furthermore, you have stated that the transaction was negotiated as an exchange of the Apartments. Therefore, based on these facts, the transfer of both Apartments are related and will be treated as the exchange of one Apartment for the other. The transfer of each Apartment in exchange for the other will be a transaction subject to the RPTT.

Where two parties exchange real property, the consideration in each case is the fair market value of the property received in exchange for the realty conveyed. Title 19 of the Rules of the City of New York §23-02 "Consideration" (1), illustration (iv). Although the illustration is written in terms of the exchange of real property, the same principles apply with respect to exchanges of economic interests in real property, such as cooperative shares in connection with the grant or transfer of leasehold interests. Therefore, the consideration for the transfer of the Taxpayers' Apartment is deemed to be the shares allocable to the Purchaser's Apartment and the consideration for the transfer of the Purchaser's Apartment is deemed to be the shares allocable to the Taxpayers' Apartment. Although the addenda to the contracts seek to ascribe a value of \$ to the transaction, it is clear that figure is derived from the original purchase price paid for the Taxpayers' Apartment and is not based on any reasonable estimate of the fair market value of the Apartments. Once the fair market value of each of the Apartments has been determined, the tax owed for each transaction can be calculated. The determination of the fair market value of an apartment is a factual question based on various factors and is beyond the scope of a letter ruling.

The Department reserves the right to verify the facts submitted.

Very truly yours,

/S/ Devora B. Cohn  
Associate Commissioner  
Office for Legal Affairs

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