



FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

March 14, 2003

RE: Ruling Request

Commercial Rent or Occupancy Tax
FLR: 024797-007

Dear _____ :

This letter responds to your request, dated December 16, 2003, for a ruling on behalf of _____ Limited Partnership (the "Taxpayer") regarding the application of the New York City Commercial Rent or Occupancy Tax (the "CRT") to the facts described below. Additional information relating to this request was received on February 26, 2003.

FACTS

The facts presented are as follows:

The Taxpayer is a theatrical production company, formed on July 2, 199 , that produces the musical _____ (the "Musical").¹ The Musical opened _____, 199 at the _____ Theater ("Theater 1"). It was performed at Theater 1 until _____ and, on _____, 199 , the Musical began performances at the _____ Theater ("Theater 2"). The Musical was performed at Theater

¹ The Musical is a revival of the musical previously performed on Broadway in _____. The Taxpayer had no connection to the _____ production.

2 until _____, 200 . On _____, 200 the Musical began performances at the _____ Theater ("Theater 3"). A recent press release issued by the Taxpayer stated that "[The Musical] ... is in its _____th year on Broadway."

The Taxpayer claimed an exemption from the CRT for the 52-week period beginning _____, 1996 and ending _____, 1997 under section 11-704(e)(1) of the Administrative Code of the City of New York (the "Code") described below. It began paying CRT on _____, 1997 and has filed a CRT return and paid the tax for all quarters through November 30, 2002. It has not claimed the exemption provided by Code section 11-704(e)(1) for any period other than the period beginning _____, 1996 and ending _____, 1997.

ISSUE

You have requested a ruling that the Taxpayer is exempt from the CRT with respect to rent paid to Theater 3 for a 52-week period beginning when the Musical began to be performed at that theater under Code section 11-704(e)(1).

CONCLUSION

Based on the facts presented and representations submitted, we have determined that the Taxpayer will not be exempt from the CRT under Code section 11-704(e)(1) with respect to rent paid to Theater 3 in connection with the performance of the Musical.²

DISCUSSION

The CRT is imposed on rent paid by a tenant who occupies, uses, or intends to occupy or use, premises in New York City for "carrying on or exercising any trade, business, profession, vocation or commercial activity." Code sections 11-701(5), 11-701(7), and 11-702(a).

Code section 11-704(e)(1) provides a 52-week exemption from the CRT to certain theatrical tenants who would otherwise be subject to tax. That section provides:

Notwithstanding any other provision of law to the contrary, a tenant who uses taxable premises for the production and performance of a theatrical work shall be exempt from the tax imposed by this chapter with respect to the rent paid for such taxable premises for a period not exceeding fifty-two weeks beginning on the date that the production of such theatrical work commences, provided, however, that this subparagraph shall not

² This ruling does not address any issues related to the period from _____, 1996 to _____, 1997, during which the Taxpayer claimed the exemption provided by Code section 11-704(e)(1), such as whether, or under what circumstances, a revival can constitute a new production.

apply to any theatrical work the production of which commenced prior to June first, nineteen hundred ninety-five.

The Taxpayer claimed the exemption for the first year of the Musical's production when it was performed at Theater 1. It now is seeking to claim the exemption for the 52-week period beginning when the Musical was first performed at Theater 3. Exemptions to taxation are strictly construed against the taxpayer. As the court stated in Matter of the Application of 31171 Owners Corp. v. New York City Dept. of Housing and Preservation and Development, 190 A.D.2d 441, 599 N.Y.S.2d 19 (N.Y. App. Div. 1993):

Since tax exemptions are in derogation of each taxpayer's responsibility to share the general tax burden, the rule has developed that they are to be strictly construed against the one seeking the benefit and, in case of ambiguity, any doubt resolved in favor of the taxing authority. (See, Matter of City of Lackawanna v. State Board of Equalization, 16 N.Y.2d 222, 230.)

Code section 11-704(e)(1) provides an exemption from tax for the 52-week period "beginning on the date that the production of such theatrical work commences." In this case, production of the Musical "commenced" at Theater 1 in 199 . The Musical, which, as stated the Taxpayer stated in a recent press release, "is in its th year on Broadway," is the same "theatrical work" when it is performed at Theater 3 as it was when it was performed at Theaters 1 and 2.³ As a result, production of the Musical did not "commence" when it began to be performed at Theater 3. Therefore, the Taxpayer cannot claim an exemption under Code section 11-704(e)(1) for the 52-week period beginning when the Musical was first performed at Theater 3.

* * *

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

Sincerely,

Devora B. Cohn
Associate Commissioner
for Legal Affairs

LED: ld

³ It should be noted that while the Taxpayer claimed the exemption provided by Code section 11-704(e)(1) when the production started in 199 , but did not claim it when it the production moved to Theater 2 in 199 .