



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

October 15, 2003

RE: Ruling Request

Real Property Transfer Tax
FLR: 034806-021

Dear _____ :

This letter responds to your request, received June 20, 2003, on behalf of ("Taxpayer 1") and _____ ("Taxpayer 2") (collectively, the "Taxpayers"), for a ruling regarding the application of the New York City Real Property Transfer Tax (the "RPTT") to the proposed conveyance described below. This office received additional information concerning this request on July 17 and 27, and August 6, 2003.

FACTS

The facts presented are as follows:

The Taxpayers own real property located in _____ (block _____, lot _____) (the "Property"). Taxpayer 1 owns _____ percent of the Property and Taxpayer 2 owns the remaining _____ percent.

The Taxpayers desire to convey their ownership interests in the Property to a limited liability company. To this end, the Taxpayers propose to form a new limited liability company (the "LLC"). Taxpayer 1 would own _____ percent of the membership interests in the LLC, and Taxpayer 2 would own the remaining _____ percent of the membership interests.

Upon the formation of the LLC, the Taxpayers intend to convey by deed their interests in the Property to the LLC.

ISSUE

You have requested a ruling that the proposed conveyance by the Taxpayers to the LLC would be exempt from the RPTT under 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 conclude that the proposed conveyance by the Taxpayers to the LLC would be exempt from the RPTT under Code section 11-2106(b)(8).

DISCUSSION

The RPTT applies to each deed conveying an interest in New York City real property when the consideration for the real property interest exceeds \$25,000. Code section 11-2102(a). In the case of a conveyance of real property to a limited liability company in exchange for a membership interest in that company, the consideration is deemed to be equal to the greater of the fair market value of, or the amount of any indebtedness on, the real property. Section 23-03(e)(3)(v) of title 19 of the Rules of the City of New York (the "RCNY").

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 an interest in 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. Under 19 RCNY section 23-05(b)(8)(iv), 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 this case, the proposed conveyance by the Taxpayers to the LLC would be subject to the RPTT unless it is otherwise exempt. It would be exempt under Code section 11-2106(b) and 19 RCNY section 23-05(b)(8)(iv) to the extent that the Taxpayers own the same beneficial interest in the Property after the proposed conveyance as they owned before that conveyance. Before the proposed conveyance, Taxpayer 1 beneficially owns percent of the Property and Taxpayer 2 beneficially owns percent. Following the conveyance, the LLC would own the Property. Because Taxpayer 1 would own a -percent membership interest in the LLC, she would own a -percent beneficial interest in the Property following the conveyance. Similarly, Taxpayer 2 would beneficially own percent of the Property following the conveyance as a result of owning a -percent membership interest in the LLC.

Because there would be no change in the Property's beneficial ownership as a result of the proposed conveyance, that conveyance would be exempt from the RPTT under Code section 11-2106(b)(8).

* * *

The Department reserves the right to verify the information submitted.

Sincerely,

Ellen E. Hoffman
Assistant Commissioner for Tax Law & Conciliations

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