



FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
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August 30, 2007

Re: Request for Letter Ruling
Real Property Transfer Tax
FLR: 064853-021

Dear Sirs:

This is in response to your request for a ruling as to the applicability of the New York City Real Property Transfer Tax ("RPTT") to the proposed transfer of a condominium unit currently leased to (the "Condominium") by ("Partners") to the Trust for Cultural Resources of the City of New York (the "Trust") and the reversion of the Condominium to Partners. Supplemental information was submitted on August 8, 17 and 24, 2007.

ISSUE:

You have requested a ruling that the RPTT does not apply to the transfer of the Condominium to the Trust or to its reversion to Partners.

CONCLUSION:

The RPTT is not applicable to the transfer of the Condominium because the Trust is a political subdivision of the State. Because the Trust also is functioning as an agent or straw man of Partners while holding legal title to the Condominium, the reversion of the Condominium to Partners also is not subject to the RPTT.

FACTS:

The facts presented are as follows:

Partners is the owner of real property located at (the "Property"). Partners is contemplating the creation of a condominium at the Property. The condominium shall consist of two units: the Condominium covering that portion of the Property currently leased to (the "Lessee") and one unit covering the remainder of the Property (the "Landlord Unit").

Prior to the creation of the of the condominium, ("") loaned to Partners a loan in the original principal amount of \$365,000,000 (the " Loan") secured by a first mortgage lien on the Property (" \$365,000,000 Mortgage"). After the creation of the condominium the \$365,000,000 Mortgage will be split and modified as follows: (i) The Condominium will be encumbered by (A) a first mortgage lien in favor of , in the original amount of \$47,347,800 (the "Condominium Unit 1st Mortgage") and (B) a

collateral mortgage lien in favor of _____, in the original principal amount of \$317,652,200 (the “Condominium Unit Collateral Mortgage”) and (ii) Landlord unit will be encumbered by (A) a first mortgage lien in favor of _____, in the principal amount of \$317,652,200 (the “Landlord Unit 1st Mortgage”) and (B) a collateral mortgage lien in favor of _____, in the original principal amount of \$47,347,800 (the “Landlord Unit Collateral Mortgage”). The Condominium Unit Collateral Mortgage will be given as additional security for the notes secured by the Landlord Unit 1st Mortgage. The Landlord Unit Collateral Mortgage will be given as additional security for the notes secured by the Condominium Unit 1st Mortgage.

Pursuant to a condominium unit deed (the “Deed”), Partners will convey the Condominium to the Trust (i) for a consideration of \$10.00 and (ii) subject to (A) the Condominium Unit 1st Mortgage and (B) the Condominium Unit Collateral Mortgage. Notwithstanding, the conveyance of the Condominium to the Trust, Partners shall remain liable for all payments due under the notes secured by the Condominium Unit 1st Mortgage and the Condominium Unit Collateral Mortgage and for all obligations under the Condominium Unit 1st Mortgage and the Condominium Unit Collateral Mortgage. In addition, Partners shall remain liable for all other expenses associated with the Condominium. Pursuant to the terms of the Deed, title to the Condominium will revert to Partners on the earlier of (a) the fourth anniversary of the date of the Deed/conveyance and (b) the occurrence of any reverter event described in the Deed.

Pursuant to the terms of a lease (the “Net Lease”), a memorandum of which will be recorded in the public records, the Trust will net lease the Condominium to Partners for an annual rent of \$10.00. The term of the Net Lease will expire on the earlier of (i) the fourth anniversary of the date of conveyance of the Condominium to the Trust and (ii) the occurrence of any reverter event described in the Deed. As additional security for the _____ Loan, the Condominium Unit 1st Mortgage and the Condominium Unit Collateral Mortgage will be spread to encumber the Net Lease.

Partners will in turn sublease the Condominium to the Lessee pursuant to the terms of an existing lease between Partners and the Lessee, as modified by the parties (the “Sublease”). The Lessee shall subordinate the Sublease to the condominium declaration and the Net Lease, the Condominium Unit 1st Mortgage and the Condominium Unit Collateral Mortgage.

The Condominium will also be conveyed to the Trust subject to a “springing” net lease, between Partners, as landlord, and Partners’ affiliate (“Partners’ Affiliate”) as tenant (the “Affiliate Lease”). Partners’ Affiliate will be an entity 100% owned either by Partners or by Partners’ principals. The term of the Affiliate Lease shall commence on the earlier of (a) the date of expiration or earlier termination of the Net Lease and (b) the fourth (4th) anniversary of the date of the conveyance of the Condominium to the Trust. Partners’ Affiliate shall join in the Condominium Unit 1st Mortgage and the Condominium Unit Collateral Mortgage in order to grant a first mortgage lien on its interest in the Affiliate Lease.

The Trust was formed pursuant to the New York State Cultural Resources Act which is codified in Articles 20 and 21 of the Arts and Cultural Affairs Law, (the “Act”) and discussed in Section 21.05 of the Act. Pursuant to Section 20.07 of the Act, the Trust is considered a political subdivision of the State.¹ One of the stated purposes for the creation of the Trust is to encourage the creative and innovative use of public and

¹ Similarly, legislative findings contained in Act §21.03(2) state “the creation of the [Trust] and the delegation to the trust of part of the sovereign power of the state are in all respects for the benefit of the people of the state and constitute a governmental, state, municipal and public purpose; and that the exercise by the trust of the functions and powers granted to it under [Article 21] constitutes the performance of an essential public and governmental function.”

private resources in order to preserve and protect the cultural resources of the City. Act §21.03(1)(f). Because the Trust is a political subdivision of the State under Section 20.07 of the Act, its income is exempt from federal taxation under Internal Revenue Code §115 which provides that gross income does not include “income accruing to the government of any possession of the United States, or any political subdivision thereof.”

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. Administrative Code of the City of New York (the “Code”) section 11-2102(a). Code section 11-2101.9 defines “consideration” as the price paid or required to be paid for the property and includes the amount of any indebtedness on the property, whether or not that indebtedness is assumed. Code section 11-2104 provides that the tax shall be paid by the grantor, however, it provides further that the grantee is liable if the amount of tax due is not paid by the grantor or the grantor is exempt from tax.

Code section 11-2106(a)(1) exempts New York State or any of its agencies from the RPTT. Because the Trust is considered a political subdivision of the State, it qualifies for the exemption.² In addition, Code section 11-2106(b)(3) provides that the RPTT does not apply to a deed, instrument or transaction conveying or transferring real property or an economic interest therein to any governmental body or person exempt from payment of the tax pursuant to Code section 11-2106(a). Thus, Partners is not subject to the RPTT upon the transfer of the Condominium to the Trust.

Under the above analysis, Partners would still be subject to the RPTT upon the reversion of the Condominium. However, pursuant to Code section 11-2106(b)(7), the RPTT does not apply to a deed, instrument or transaction conveying real property to or from a principal to its “agent, dummy, straw man or conduit”. It is our opinion that the exemption for an agent, dummy or straw man would apply to exempt Partners on the reversion.

In *Matter of Goldman, Sachs & Co. v. Michael*, 113 A.D.2d 326, 330 (1st Dept. 1985), the court stated that a transfer qualified for the exemption when “there was [a] prior agreement that the agent-entity would be created for a limited period and would serve a definite stated purpose and where the agent purchased the transferred property with funds provided by the principal.”

In this case, the Condominium is being transferred to the Trust in order that it may qualify for an exemption from New York City Real Property Taxes. The Trust has determined that this arrangement is necessary to effectuate its governmental and public purpose of protecting the cultural resources of the City. The transfer is for a limited period of time with reversion to take place at the latest in four years from the transfer. Beneficial ownership of the Condominium is remaining with Partners for all purposes and the costs of maintaining the Condominium is being borne by Partners. This result is not changed by the fact that there is an Affiliate Lease that will go into effect upon

² The Trust is also exempt pursuant to the terms of the Act. Act §21.05 states that the Trust has all the “powers, rights, privileges and exemptions” of a trust described in Article Twenty of the Act. Act §20.33(2) provides:

“Notwithstanding any other provision of any other law to the contrary, the income, monies, operations and properties of a trust shall be exempt from taxation, including without limitation any and all state and local income, franchise, occupancy, transfer, recording, real property, sales and compensating use taxation.”

reversion of the Condominium to Partners. Under the terms of the Affiliate Lease, Partners will remain the owner of the Condominium and no change in ownership will be effectuated by the Affiliate Lease.

Because the Trust is obtaining mere legal title to the Condominium and the transfer is of limited duration and for a specific purpose, it is our opinion that the Trust is functioning merely as an agent, dummy or straw man of Partners. Therefore, neither the transfer of the Condominium from Partners to the Trust, nor the reversion of the Condominium from the Trust to Partners is subject to the RPTT. The Department reserves the right to verify the facts submitted.

Very truly yours,

Dara Jaffee
Assistant Commissioner,
Office of Legal Affairs

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