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THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
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March 29, 2007

Re: Request for Ruling
Real Property Transfer Tax
FLR-064863-021

Dear :

This letter responds to your request, dated November 28, 2006, 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 December 14, 2006.

FACTS:

The facts presented are as follows:

You, (the "Husband"), and your wife, , (the "Wife") (referred to collectively as the "Taxpayers,") jointly own two properties in Staten Island: a house that you live in located at ("Property 1") and a nearby vacant lot located at ("Property 2") (collectively, the "Properties"). Neither of the Properties is encumbered by a mortgage.

On 2005, the Taxpayers established two revocable trusts: the Revocable Trust Agreement (the "Husband Trust") and Trust (the "Wife Trust"). The Husband Trust provides that the Husband is the grantor and that the Husband and Wife are co-trustees. Pursuant to that trust, the co-trustees are required to pay the net income from the Husband Trust to the grantor during his lifetime, plus other sums they may deem necessary for the benefit of the grantor and the grantor's spouse. Upon the death of the grantor, the property will be distributed to a trust for the benefit of the wife, and upon her death to other designated individuals. The Husband Trust provides that the grantor retains the right to revoke the trust, withdraw property from the trust, and otherwise to amend or alter the terms of the Trust during his lifetime.

The Wife Trust provides that the Wife is the grantor and that the Wife and Husband are co-trustees. Pursuant to that trust, the co-trustees are required to pay the net income from the Wife to the grantor during her lifetime, plus other sums they may deem necessary for the benefit of the grantor and the grantor's spouse. Upon the death of the grantor, the property will be distributed to a trust for the benefit of the husband and, upon his death, to other designated individuals. The Wife Trust provides that the grantor retains the right to revoke the trust, withdraw property from the trust, and otherwise to amend or alter the terms of the Trust during her lifetime.

The Taxpayers wish to transfer the Properties to a trust to avoid probate. They plan to transfer the two Properties jointly to the Husband Trust and the Wife Trust, such that each trust will own a 50 percent interest in each Property 1 and Property 2. The Taxpayers will receive no consideration from the Trusts for the transfer from either of the trusts, the trusts' beneficiaries or anyone else. Following the proposed transfers, the Husband Trust will own 50 percent of Property 1 and 50 percent of Property 2, and the Wife Trust will own 50 percent of Property 1 and 50 percent of Property 2.

ISSUE:

You have requested a ruling that the conveyance of the Property 1 and Property 2 from the Taxpayers to the Husband Trust and Wife Trust will be a mere change of form 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 conclude that the conveyance of the Property 1 and Property 2 from the Taxpayers to the Husband Trust and Wife Trust will be a mere change of form 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 when the consideration for the real property interest exceeds \$25,000. Code section 11-2102(a). 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, before the proposed conveyance, the Taxpayers jointly own 100 percent of Property 1 and Property 2. As a result, the Husband beneficially owns 50 percent of Property 1 and 50 percent of Property 2, and the Wife beneficially owns 50 percent of Property 1 and 50 percent of Property 2.

The Taxpayers plan to convey the two Properties jointly to the Husband Trust and the Wife Trust, such that each trust would own a 50 percent interest in each Property 1 and Property 2. The Husband Trust provides that the Husband is the grantor and that the Husband and Wife are co-trustees. Pursuant to that trust, the co-trustees are required to pay the net income from the Husband Trust to the grantor during his lifetime, plus other sums they may deem necessary for the benefit of the grantor and the grantor's spouse. The Husband Trust provides that the grantor retains the right to revoke the trust, withdraw property from the trust, and otherwise to amend or alter the terms of that Trust during his lifetime. With respect to the Wife Trust, the Wife is the grantor, she and the Husband are co-trustees, and the Wife Trust provides the grantor the same rights as the Husband Trust does, including the right to revoke the trust.

In Hilles Timpson (Advisory Opinion), TSB-A-92(7), (November 3, 1992), the New York State Commissioner of Taxation and Finance addressed a conveyance to a revocable trust in the context of the to New York State Real Property Transfer Gains and Real Estate Transfer Taxes. In that case, the taxpayer

planned to enter into a trust agreement, with herself and another individual as trustees, creating a revocable trust for the taxpayer's sole benefit during her life. Under the trust agreement, the taxpayer would retain all her rights to use all property transferred to the revocable trust and would have the exclusive right to have distributed to her all income earned on that property. In addition, the Taxpayer would have the unconditional right to revoke the trust. The Commissioner held that the Taxpayer would be the beneficial owner of the property held in the trust, and, as a result, the conveyance did not result in a change of beneficial ownership and was exempt from the taxes at issue. See also Betty Reader (Advisory Opinion), TSB-A-95(4), (May 15, 1992).

The same factors present in the trust described in Hilles Timpson, such as the grantor's right to revoke or amend its terms and to receive all the benefits of the property held by the trust, are present in the Husband Trust and Wife Trust, and in those trusts, like the trust described in Hilles Timpson, the grantor should be considered to be the beneficial owner of property. Thus, following the proposed conveyance, the Husband would own the property held by the Husband Trust and the Wife would own the property held by the Wife Trust. As a result, the Husband would beneficially own 50 percent of Property 1 and 50 percent of Property 2, and the Wife would beneficially own 50 percent of Property 1 and 50 percent of Property 2.

Based on the representations submitted, the beneficial ownership of Property 1 and 2 following the proposed conveyance would be the same as the beneficial ownership before the conveyance. Because there would be no change in the Property's beneficial ownership as a result of the proposed conveyance, that conveyance would effect a mere change of form and be exempt from the RPTT under Code section 11-2106(b)(8).