

July , 1999

Re: Request for Exemption  
Real Property Transfer Tax

FLR-994753-021

Dear :

This letter responds to a request dated , 1999, for an exemption from the New York City Real Property Transfer Tax (the "RPTT") for the (the "Taxpayer") This office received additional information relating to the request on , 1999.

### FACTS

The facts presented are as follows:

The Taxpayer is a not-for-profit corporation formed in , under section 402 of the New York Not-for-Profit Corporation Law and Article XI, section 573, of the New York State Private Housing Finance Law (the "PHFL"). That article was enacted to enable companies to participate more effectively in existing municipal, state and federal assistance programs and to make more effective use

of other sources of financing which may be available for housing of persons and families of low-income. PHFL § 571.

The Taxpayer's certificate of incorporation states that it is "organized exclusively for the charitable purposes of ownership, operation, and development and disposition, on a not-for-profit basis, of housing projects for persons of low income" and that "all income and earnings of the Corporation shall be used exclusively for the corporate purposes of the Corporation, and no part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any member, director, officer, employee of the Corporation or any private individual, firm, corporation or association (except that reasonable compensation may be paid for services rendered)" and that the Taxpayer is not authorized to carry on propaganda or otherwise attempt to influence legislation; and that, in the event of the dissolution of the Taxpayer or the winding up of its affairs, any assets remaining in the Taxpayer after satisfying its liabilities must be distributed to organizations created and operated for non-profit purposes and which shall qualify under IRC section 501(c)(3). The Taxpayer intends to apply for an exemption from federal income tax under IRC section 501(c)(3) but has not yet done so.

The Project. The property involved consists of Block , Lot and , Block , part of Lot , and Block , Lot . The project will consist of to be built on the property by the Taxpayer using a developer and general contractor affiliated with the Taxpayer in the Urban Renewal Area (the "URA"). The URA consists of approximately acres located in . The URA was created in in recognition of the then rapid pace of deterioration in the area. The western portion of the URA was described in the original urban renewal designation as containing a number of buildings seriously damaged by fire and vandalism. Most of the buildings showed serious neglect and structural deficiencies. Most of the small one and two family homes then existing were described as in "poor" condition. The population of the area includes many families previously relocated one or more times who still do not occupy decent housing. In the late and early , the City acquired most of the privately owned property in the area and demolished much of the existing housing.

Except for two housing projects in the area, the land has remained vacant since that time contributing to the increased degradation of the community.

The median household income in the immediate area is \$ , less than half that for New York City (the "City") as a whole. The Department of Housing Preservation and Development ("HPD") is

working with the Taxpayer on the Project. The Urban Development Area Action Program ("UDAAP") under the General Municipal Law, is a program to redevelop areas that are "slum or blighted, or which are becoming slum or blighted areas because of substandard, insanitary, deteriorated or deteriorating conditions, factors, and characteristics . . . ." GML §§ 691, 692.6. Through UDAAP, HPD is providing a \$35,000 subsidy for each purchaser of a house, which does not have to be repaid if the purchaser does not sell the house and occupies it as a primary residence for 25 years. If the house is sold within three years, the subsidy has to be repaid out of any profit on the sale. If the house is sold after 3 years but within 25 years, the outstanding balance is repayable out of 50 percent of the profit on the sale. The unpaid balance of the subsidy is assumed by any purchaser within 25 years. The balance of the construction cost is being financed at the prime interest rate by \_\_\_\_\_, which will provide permanent financing to purchasers of houses. HPD is also funding infrastructure improvements in the area through a grant.

At least 75 percent of the houses must be sold to purchasers whose gross household income does not exceed 165 percent of the New York City Area Median Income ("AMI"). Up to 25 percent may be sold to individuals whose gross household income does not exceed 250 percent of AMI. Residents of the community board in which the Project is located are given preference in purchasing up to thirty percent of the houses. Purchasers of houses must occupy them as their principal residence, although they are permitted to rent out the other residential unit, and must otherwise comply with the requirements of UDAAP. The developer is limited to a profit of ten percent of the construction costs. The general contractor's profit is effectively limited because the project is to be built under a fixed price contract. Both the construction costs and the contract have been approved by HPD. If the Taxpayer sells the houses at a price that exceeds the aggregate cost, the Taxpayer must remit a percentage of any excess to HPD as a commitment fee.

## ISSUE

You have requested a ruling that the RPTT will not be imposed upon the sale of the houses in the Project by the Taxpayer by reason of section 11-2106(b)(2) of the New York City Administrative Code (the "Code").

## CONCLUSION

Based upon the facts presented and the representations submitted, we have determined that Code section 11-2106(b)(2) applies to the Taxpayer. Thus, the sales of houses in the Project by the Taxpayer will be exempt from the RPTT.

## 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 11-2101.9 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. Generally, the grantor is liable for the tax. Under Code section 11-2104, 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(b) exempts certain deeds, instruments, and transactions from the RPTT. When that section applies both the grantor and the grantee are exempt. Code section 11-2106(b)(2) exempts conveyances of real property by any corporation:

organized and operated exclusively for religious, charitable, or educational purposes, . . . and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph. . . .

Code section 11-2106(b)(2) closely resembles IRC section 501(c)(3), which exempts certain religious, charitable, and educational organizations from federal income tax. Code section 11-2106(b)(2) does not expressly require an organization to have received a federal exemption under IRC section 501(c)(3) to be exempt from the RPTT. However, because of the substantial similarity between the IRC and Code provisions, this Department will take notice of judicial and administrative interpretations of IRC section 501(c)(3) in applying Code section 11-2106(b)(2).

Exempt Purpose. In Revenue Ruling 70-585, 1970-2 C.B. 115, the Internal Revenue Service (the "IRS") addressed the question of when an organization formed and operated to provide housing qualifies as "charitable." In Situation 1, the IRS considered an organization formed and operated to provide housing for low-income persons and concluded that "[b]y providing homes for low-income families who otherwise could not afford them, the organization is relieving the poor and distressed [and thus] is organized and operated exclusively for charitable purposes" under IRC section 501(c)(3). In

Situation 3 of Revenue Ruling 70-585, the IRS addressed the exemption of an organization formed and operated to combat community deterioration by assisting in the rehabilitation of an old and run-down residential area. The IRS concluded that the organization was organized and operated for charitable purposes under IRC section 501(c)(3).

In Rev. Proc. 96-32, 1996-20 IRB 14, the IRS established safe harbor guidelines to identify low-income housing organizations that will, with certainty, be considered to relieve the poor and distressed. The safe harbor guidelines permit a limited number of units occupied by residents with incomes above the low-income limits in order to assist in the social and economic integration of the poorer residents and, thereby, further the organization's charitable purposes. To avoid giving assistance to those who can otherwise afford safe, decent, and sanitary housing, the safe harbor guidelines require occupancy by significant levels of both low-income and very low-income families.

An organization will qualify under the safe harbor guidelines if it establishes, for each project, that (1) at least 75 percent of the units are occupied by residents that qualify as low-income (defined generally as persons earning no more than 80 percent of the median area income); and (2) either at least 20 percent of the units are occupied by residents that also meet the very low-income limit for the area (defined generally as persons earning no more than 50 percent of the median income) or 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit. Up to 25 percent of the units may be provided at market rates to persons who have incomes in excess of the low-income limit.

Rev. Proc. 96-32 states that organizations not meeting the safe harbor guidelines may, nevertheless, qualify as "charitable" and sets forth other criteria that may be applied to such organizations including: combating community deterioration and lessening the burdens of government.

In this case, the purpose of the PHFL, under which the Taxpayer is incorporated, is to foster low-income housing, and the Taxpayer's certificate of incorporation provides that it was organized exclusively to provide housing for persons of low income. However, the criteria for sales of houses in the Project do not meet the IRS's safe harbor guideline set out in Rev. Proc. 96-32; none of the houses are reserved for persons earning less than the area's median income. Nevertheless, the fact that the Project is located in a designated URA and has been approved under UDAAP, a government program to redevelop blighted areas indicates that the City considered the redevelopment of the area to be part of its functions. Moreover, the deteriorated nature of the area has been well documented through the years of efforts to correct it. Therefore, in our opinion, while the Taxpayer does not meet the safe harbor guidelines, it does satisfy the other criteria set forth in Rev. Proc. 96-32 for "charitable" status.

Other matters. For an organization to be exempt from the RPTT, Code section 11-2106(b)(2) also requires that no part of its earnings inures to the benefit of any private shareholder or individual, that no substantial part of its activities is carrying on propaganda or otherwise attempting to influence legislation. Code section 11-2106(b)(2) also provides that no exemption is available to an entity engaged in carrying on a trade or business for profit regardless of whether all the profits are payable to an entity otherwise qualifying for the exemption. The Taxpayer's certificate of incorporation requires that all income and earnings must be used exclusively for the Taxpayer's corporate purposes; that no part of its earnings can inure to the benefit of any individual or private entity; that the Taxpayer cannot carry on propaganda or otherwise attempt to influence legislation; and that, in the event of dissolution, any assets remaining in the Taxpayer after satisfying its liabilities must be distributed to organizations qualifying under IRC section 501(c)(3).

Based upon the foregoing, it is the opinion of this office that the Taxpayer satisfies the requirements for exemption under Code section 11-2106(b)(2). Thus, the RPTT will not be imposed upon the conveyance of the houses in the Project from the Taxpayer. However, notwithstanding the exemption hereby granted pursuant to this ruling, the Taxpayer must report the transfers of the houses on form NYC-RPT and should attach a copy of this ruling to that return.

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

Very truly yours,

Devora B. Cohn

Assistant Commissioner  
for Legal Affairs