

December , 1999

Re: Ruling Request

Tax on Transfer of Taxicab Licenses
FLR-994755-014

Dear

This letter responds to your request, dated November 9, 1999, for a ruling applying the New York City Tax on Transfer of Taxicab Licenses (the "TTTL") to the proposed transaction described below.

FACTS

The facts presented are as follows:

, (the "Taxpayer") owns all the stock of several corporations (the "Corporations"), each of which owns a New York City taxicab license. Each of the Corporations has borrowed from unrelated lenders and has pledged the taxicab license it holds as security for that debt. In addition, the Taxpayer and her husband (the "Spouse") have each personally guaranteed each such borrowing.

For estate planning purposes, you propose to have the Taxpayer transfer by gift all the stock of each Corporation to the Spouse. The Taxpayer will not receive any money, property, or anything of value in exchange for that stock. Following each transfer, the Taxpayer and the Spouse will remain personally liable to the third-party lenders in the exact manner as they had been before the transfers. In addition, the Taxpayer will agree to indemnify the Spouse for any damages resulting from the guarantee.

ISSUE

You have requested a ruling that the Taxpayer's transfer by gift of the Corporations' stock will be without consideration and, as a result, not subject to tax under the TTTL.

CONCLUSION

Based upon the facts presented and the representations submitted, we have determined that the Taxpayer's transfer by gift of the Corporations' stock will be without consideration and, as a result, not subject to tax under the TTTL.

DISCUSSION

The TTTL imposes a tax on each transfer of a New York City taxicab license or interest therein. Section 11-1402.a of the New York City Administrative Code (the "Code"). Under Code section 11-1402.b, the TTTL also applies to the transfer of shares of stock of a corporation that holds a taxicab license or interest therein. In each case, the tax is imposed at the rate of five percent of the consideration given for the transfer. Code section 11-1401.4 defines "consideration" as the price paid or required to be paid for the license by money, property, or anything of value, "including the cancellation or discharge of an indebtedness or obligation."

In this case, each Corporation holds a taxicab license. The Taxpayer, the Corporations' sole shareholder, proposes to transfer all the Corporations' stock to the Spouse. Under Code section 11-1402.b, the TTTL will apply to that transfer. The amount of the tax will be five percent of the consideration given for the transfer.

Consideration under the TTTL is the price paid, or required to be paid, for the license by money, property, or anything of value. You have represented that the Taxpayer will make a gift of the shares to the Spouse and will not receive any money, property, or anything of value in return.

Consideration under the TTTL also includes the cancellation or discharge of an indebtedness or obligation. Each Corporation has borrowed from unrelated lenders and has pledged its taxicab license as security for that debt, and the Taxpayer and the Spouse have each personally guaranteed those borrowings. You have represented that following the transfer, the Taxpayer will remain personally liable to the third-party lenders in the exact manner as she had been before the transfers, and she will also agree to indemnify the Spouse for any damages resulting from that guarantee. Thus, following the transaction as you propose it, the debt secured by the licenses will remain unchanged. The TTTL includes debt as consideration only if it is "cancell[ed] or discharge[d]." Because neither of those events has occurred here, under a plain reading of the statute, we conclude that the debt should not be included in consideration.

Contrasting the TTTL to the New York City Real Property Tax (the "RPTT") supports that conclusion. Like the TTTL, the RPTT is imposed on the amount of consideration for a transfer. The definition of consideration under the RPTT provides that consideration "shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed." Code § 11-2101.9.

The second sentence of Code section 11-2101.9, quoted above, expressly includes in consideration the amount of indebtedness to which the property transferred is subject, whether or not that indebtedness is assumed. The Legislature's inclusion of that additional sentence, not present in the TTTL definition of consideration, shows that the Legislature did not intend that the phrase "cancellation or discharge" to include debt that remains on the property. Thus, the difference between the RPTT and the TTTL supports the conclusion that debt that remains on a taxicab license following a transfer is not included in consideration under the TTTL.

We conclude that the Corporations' debt secured by the taxicab licenses will not be included in consideration under the transaction as you propose it. Because the Taxpayer will not receive any money, property or anything of value for the Corporations' stock, the transfer by the Taxpayer to the Spouse will be without consideration and not subject to tax under the TTTL.

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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

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