

April 13, 1999

Re: Ruling Request  
FLR-994741-021  
Real Property Transfer Tax  
Block: Lot:

Dear :

This is in response to your request for a ruling dated on behalf of (the "Taxpayer") as to the applicability of the New York City Real Property Transfer Tax ("RPTT") to the proposed transaction described below. Additional information was received by this office on and .

FACTS:

The facts presented are as follows:

On , the Taxpayer acquired title to (the "Property"). Although the Taxpayer is listed on the deed as the only owner of the Property the Taxpayer was acquiring the Property on behalf of the persons or entities listed below (the "Beneficial Owners") with the following beneficial interests in the Property:

Beneficial  
Interest

The Beneficial Owners are signatories to an agency agreement (the "Agreement") dated stating that they are the beneficial owners of the Property, listing their contributions towards the purchase price and providing for the distribution of income and loss from the Property.

Since , the Property has been operated under the partnership name of (the "Partnership"), a general partnership.<sup>1</sup> All tax returns

<sup>1</sup> Although the tax returns through indicate that the Partnership is a limited partnership, the Taxpayer has submitted an affidavit that the Partnership has always been a general partnership and that the information on the tax

listing the Property has been filed in the Partnership name and k-1's issued to the Beneficial Owners. In a telephone conversation on \_\_\_\_\_, you stated that currently the Property is subject to a mortgage of approximately \$ \_\_\_\_\_.

As a result of a transfer of a \_\_\_\_\_ % interest in the Partnership, on \_\_\_\_\_, the current beneficial owners and their beneficial interests (the "Current Beneficial Owners") are as follows:

The Taxpayer proposes to transfer title to the Property to the Partnership. The Taxpayer maintains that he took title to the Property on behalf of the Partnership and that the deed transferring the Property to the Partnership is not subject to the RPTT.

Issue:

You have requested a ruling that the transfer of the Property to the Partnership is exempt from the RPTT.

Conclusion:

Based on the facts presented and the representations submitted, we have determined that the Taxpayer's conveyance of the Property to the Partnership is exempt from the RPTT because title is already vested in the Partnership.

Discussion:

In general, the RPTT is imposed on each deed at the time of delivery by the grantor to a grantee when the consideration for the real property and any improvement exceeds \$25,000. Section 11-2102.a of the Administrative Code of the City of New York (the "Code") For purposes of the RPTT, consideration includes the amount of any mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed.

Section 23-03(j)(2) of Title 19 of the Rules of the City of New York ("RCNY") provides that the RPTT does not apply to "[a] deed to confirm title already vested in the grantee, such as a quit claim deed to correct a flaw in title."

Under New York State Partnership Law unless the contrary intention appears, property acquired with partnership funds is partnership property. N.Y. [Partnership] Law §12(2) (Mckinney 1998). In this case, the Agreement, a document dated the same day as the Taxpayer took title to the Property, states that

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returns is in error.

the Property was purchased with funds contributed by the Beneficial Owners. The Agreement further provides for the distribution of income and loss from the Property among the Beneficial Owners. Throughout the Partnership's existence it has held itself out as the owner of the Property for federal tax purposes and has carried out the business of managing the Property. The Beneficial Owners and, subsequently, the Current Beneficial Owners are listed as Partners on the Partnership's federal tax returns and their distributive shares of the Partnership's income from the operation of the Property has been reported on the returns. These facts clearly indicate that although title is held by the Taxpayer, he was acting as an agent on behalf of the Partnership when he acquired title to the Property and that the intention at the time that the Property was purchased was that it was an asset of the Partnership. Therefore, the deed conveying the Property to the Partnership is merely to confirm title that has already vested in the grantee and is exempt from the RPTT under section 23-03(j)(2) of Title 19 of the RCNY.<sup>2</sup> However, a RPTT return relating to the deed must be filed with the City Register before the deed is recorded, with a copy of this ruling attached.

The Department reserves the right to verify the information submitted.

Very truly yours,

Devora B. Cohn  
Assistant

Commissioner,

Legal Affairs

CS:cs

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<sup>2</sup> The transfer of a partnership interest on does not effect this result.