

June 29, 1999

Re: Request for Letter Ruling
Real Property Transfer Tax
FLR-994745-021

Dear :

This letter is in response to your request, dated for a ruling regarding the application of the New York City Real Property Transfer Tax ("RPTT") to the transactions described below. Additional information was received on .

FACTS

The facts presented are as follows:

The Taxpayer is a limited liability company ("Taxpayer") which has members: , and (the "unit owners").

The Taxpayer was recently designated by the Empire State Development Corporation to develop the site, located on , Block , Lot (the "Project").

The Project will consist of components: space, a facility, and a (the "Units"). The intention is that each member of the Taxpayer will own one of the units upon completion of the Project. However, because the Units will be physically and structurally integrated, it is necessary to develop the Project as a condominium regime. Due to restrictions imposed by the New York Condominium Act, the ownership of the property cannot be severed and each unit transferred to its owner prior to the substantial completion of all improvements. Therefore, the Taxpayer will take title to the property to facilitate the construction. Upon completion of the Project, the Taxpayer will submit the Property to the condominium regime and convey the Units to their respective unit owners.

Each Unit Owner will separately fund the construction, development and improvement of its respective Unit. The Taxpayer's operating agreement separates the benefits and obligations regarding the Project from the outset, so that Each Unit Owner receives all benefits and bears all obligations of its own Unit, and has no beneficial interest in, or obligations with respect to, the other Units. Prior to conversion, all allocations of profit and loss, all cash distributions, and all capital contributions attributable to each Unit will be allocated to its respective Unit Owner, and each Unit Owner will have sole design discretion with respect to its Unit.

Further, the condominium declaration will provide that the Taxpayer is making the submission for the benefit of the Unit Owners, and in effect will be acting in the capacity of a nominee, holding the property for the benefit of the Unit Owners.

ISSUE

You have requested a ruling as to whether the conveyance of the units upon completion of the Project to their respective owners will be exempt from the RPTT.

CONCLUSIONS

Based on the facts presented and the representations submitted, we have determined that the conveyance is exempt under Code section 11-2106.7 of the Administrative Code of the City of New York (the "Code") as a transfer of real property from a conduit to its principal.

DISCUSSION

Code section 11-2102.b imposes a tax on the transfer of real property or an economic interest in real property when the consideration exceeds \$25,000. However, Code section 11-2106 (b)(7) provides an exemption from the RPTT for conveyances "from a person acting as a mere agent, dummy, straw or conduit to his principal, or from the principal to such a person..."

In this instance, under the Taxpayer's Operating Agreement, the Taxpayer will purchase the property for the benefit of the Unit Owners with funds provided by them as capital contributions. The interest of each Unit Owner is limited to its interest in its Unit and the common areas adjacent thereto. The Taxpayer will then apply the Unit Owners' contributions to upgrade the Unit, submit a condominium declaration upon completion of the upgrade, and transfer the Units following approval by the Real Property Assessment Bureau. Finally, the Taxpayer will pay the transfer

tax upon acquisition of the property, which will be allocated among the Unit Owners in the same proportion as their capital contributions. In sum, the Taxpayer will never derive any benefit from the property, nor incur any detriment. It will be acting merely as a conduit.

Based upon the facts and representations submitted we have determined that the distribution by the Taxpayer of the units upon completion of the Project to the respective unit owners will be exempt from RPTT as a transfer of real property from a conduit to its principal.

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

Very truly yours,

Devora B. Cohn
Assistant Commissioner
for Legal Affairs