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Commissioner

March 3, 2020

Re: Request for a Ruling
Real Property Tax Law §418 Exemption
FLR 20-5004

Dear XXXXX

This is in response to your request dated XXXXX, on behalf of the XXXXXX, for a letter ruling regarding the application of § 418 of the Real Property Tax law ("RPTL") as it applies to the acquisition by the XXXXX of one or more leasehold condominium unit/s to be used exclusively for the purpose of maintaining offices for its Permanent Mission to the United Nations.

FACTS:

The XXXXXX is a foreign government which is a member of the United Nations. It intends to acquire in its name one or more leasehold condominium units in the city of New York to be used exclusively for the purpose of maintaining offices for its Permanent Mission to the United Nations (i.e, the offices of its ambassador to the United Nations and the staff of it ambassador). Depending on the location selected, the leasehold condominium units may or may not be formed within a fee condominium.

ISSUES:

May a real property tax exemption pursuant to § 418 of the RPTL be granted to real property, owned by the XXXXXX in the form of a leasehold condominium unit where the declaration requires the unit owner to pay all taxes attributable to its unit?

May the XXXXXX create a separate leasehold condominium unit from a fee condominium unit?

CONCLUSIONS:

A real property tax exemption pursuant to § 418 of the RPTL may be granted to real property, owned by the. XXXXXXXX in the form of a leasehold condominium unit where the declaration requires the unit owner to pay all taxes attributable to its unit.

The XXXXXXXX may create a separate leasehold condominium unit from a fee condominium unit.

LAW:

RPTL § 418 provides a tax exemption for foreign governments in pertinent part as follows:

[r]eal property of a foreign government which is a member of the United Nations or any world-wide international organization as defined in section four hundred sixteen of this chapter, the legal title to which stands in the name of such foreign government or the principal resident representative or resident representative with the rank of ambassador or minister plenipotentiary of such foreign government to the United Nations or other such world-wide organization, used exclusively for the purposes of maintaining offices or quarters, for such representatives, or offices for the staff of such representatives, shall be exempt from taxation,...

Article 9B of the Real Property Law ("RPL") the "Condominium Act" governs the creation, characteristics and management of condominiums. Specifically §339-e, of the RPL provides the following relevant definitions:

Subdivision 3. "Common elements" unless otherwise provided in the declaration, mean and include: (a) the land on which the building is located ... and (h) all other parts of the property necessary or convenient to the existence, maintenance and safety or normally in common use...

Subdivision 5. "Common interest" means the (i) proportionate, undivided interest in fee simple absolute, or (ii) proportionate undivided leasehold interest in the common elements appertaining to each unit, as expresses in the declaration...

Subdivision 7. "Declaration" means the instrument by which property is submitted to the provisions of this article, as hereinafter provided...

Subdivision 11. "Property" means and includes the land, the buildings and all other improvements thereon, (i) owned in fee simple absolute, or (ii) in the case of a condominium devoted exclusively to non-residential purposes, held under a lease or

sublease, or separate unit leases or subleases, the unexpired term of which on the date of the recording of the declaration shall not be less than thirty years...

Subdivision 14. "Unit" means a part of the property intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway...

Subdivision 16. "Unit owner" means the person or person owning a unit in fee simple absolute or in the case either (i) of a condominium devoted exclusively to non-residential purposes, or (ii) a qualified leasehold condominium, owing a unit held under a lease or sublease.

RPL § 339-f (1) provides that the Act "shall be applicable only to property the sole owner or all the owners of which submit the same to the provisions hereof by duly executing and recording a declaration... "

RPL § 339-g provides that "each unit, together with its common interest, shall for all purposes constitute real property."

Finally, RPL § 339-y (1) (a) which governs taxation of condominiums, provides in pertinent part that:

With respect to all property submitted to the provision of this article... each unit and its common interest...shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit... except that the foregoing shall not apply to a unit held under lease or sublease unless the declaration requires that the unit owner to pay all taxes attributable to his unit.

ANALYSIS:

The XXXXXXXX is a foreign government which is a member of the United Nations. We have been advised that the property in issue will be used exclusively for the purposes of maintaining offices for its Permanent Mission to the United Nations (i.e., the offices of its ambassador to the United Nations and the staff of its ambassador). RPTL § 418 specifically requires that legal title to the real property must stand in the name of the foreign government. Hence a lessee pursuant to a long-term lease is not eligible for an exemption. As such, the initial issue is whether the XXXXXXXX ownership of one or more condominium units in the form of a leasehold condominium, constitutes ownership of real property for purposes of § 418 of the RPTL.

The Condominium Act provides that its provisions are applicable to property submitted by the execution and recording of a condominium declaration. RPL § 339-f (1); 339-e(7). The term "property" is defined to include the land, the buildings and all improvements thereon either owned in fee simple absolute or in the case of a condominium devoted exclusively to non-residential purposes, held under a lease or sublease, or separate unit leases or subleases, the unexpired term on the date of the recording of the declaration is a least thirty years. RPL §339-e

(ll). Hence, under the Act, a condominium unit, which is devoted exclusively to a non-residential purpose can be formed on property held by condominium declarant either in fee or under a leasehold with a remaining term of 30 years or more.

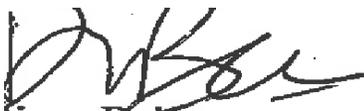
We have also been advised that the XXXXXX will acquire in its name one or more leasehold condominium units. Accordingly, once the declaration is filed the XXXXXX will own one or more units for the term of the respective lease. The leasehold condominium interest in the unit will include title to the unit as well as the unit's common interest, including an undivided percentage interest in the common elements, which includes the underlying leasehold of the land. Moreover, since RPL § 339-g provides that each unit, together with its common interest, constitutes real property, it follows that the unit as well as the underlying leasehold of the land constitutes real property for purposes of RPTL § 418.

With respect to the issue of whether a unit owner in a fee condominium can create a leasehold condominium unit from units within the fee condominium, the Act does not prohibit the creation of a leasehold condominium out of an original condominium unit, but rather appears to provide that a condominium unit would be deemed property that could be submitted to its provisions. Accordingly, it would appear that it would be legally permissible for fee unit owner to create a leasehold condominium from units within a fee condominium.

With regard to separate taxation, the condominium lease will need to provide that the XXXXXXXX will be required to pay the taxes assessed on each of its units. Pursuant to RPL § 339- Y (l)(a) each unit and its common interest is deemed to be a tax parcel which is subject to assessment. Accordingly, the tax parcel which is subject to assessment, will consist of the unit and its common interest including the leasehold of the land. As a result, the Department of Finance will assess each unit together with its common interest in the leasehold as a single tax parcel. Hence, the XXXXXXXX as the owner of one or more condominium units will be assessed the full value of each unit, which will include the unit's pro rata share of the common elements, one of which is the land.

We have determined that the XXXXXXXX as the owner of one or more leasehold condominium units with a term of 30 plus years or more is eligible for an exemption from taxation pursuant to RPTL § 418. If the documents and facts concerning the leasehold condominium unit are consistent with the representations made to Legal Affairs for purposes of this letter ruling, the tax parcel consisting of the condominium unit/s and the respective common interest should be entitled to receive an exemption pursuant to RPTL §418.

Very truly yours,



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