



April 29, 2008

RE: Request for a Ruling

Real Property Tax Law section 420-a Exemption
FLR-084874

Dear Mr.

This is in response to your request dated January 4, 2008 on behalf of XXXXXX XXXXXXXXXXXXXXXXXXXX for a ruling regarding the application of the Real Property Tax Law ("RPTL"), following a conveyance of real property from XXXXX to a single-member limited liability company ("LLC") in which XXXXX is the sole member. This office received additional information concerning this request on January 24, 2008 and February 29, 2008.

FACTS:

XXXX is a New York State nonprofit hospital corporation exempt from federal taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as amended ("IRC"). XXXX currently leases ten floors of space in an existing building located at XXXXXXXX Street (block XXX; lot XX) for the support and benefit of XXXXX. Effective with the 2008/09 tentative assessment roll published on January 15, 2008, lot XX has been apportioned into condominium tax lots XXXXXXXXXXXX (condo # XXXX). XXXXX intends to purchase commercial units comprising the ten floors that it currently leases at XX Street (lots XXXXX). XXXXX states that "after the purchase of said condominium units in fee, and thereafter XXXXX (or its exempt affiliates) will continue to occupy and use all (or portions) of them for the support and benefit of XXXX". It is understood that any portion not used for the support and benefit of XXXX will not be eligible for a section 420-a exemption.

In connection with issuing a loan for the acquisition of the subject property, the financing entities are requiring XXXXX to form a single member LLC (having XXXXX as its sole member), whose activities will be financing, purchasing, owning, managing and maintaining the condominium units located within the subject property. As a result of this requirement, XXXXX formed a Delaware LLC, the XXXXXXXX Street Condominium LLC. The Certificate of Formation of XXXXXXXXXXXX Street Condominium LLC was executed on December 7, 2007.

In addition to the information provided in the Certificate of Formation, XXXXX represents the following:

1. The LLC is organized exclusively for charitable purposes, as defined in section 501(c)(3) of the IRC.
2. There will be no pecuniary profit. The LLC will operate for not-for-profit purposes, as provided for by RPTL section 420-a.
3. There will be commonality between the management of the LLC and its single member.
4. The property will be managed and maintained by the LLC.
5. The rent charged for space receiving section 420-a exemption will not exceed carrying, maintenance and depreciation charges.
6. Upon termination of the LLC, the property will revert to XXXXX or another exempt entity. It is understood that transferring any interest in the LLC to a non-exempt entity will result in the loss of exemption.
7. The LLC will annually certify that there has been no change in the LLC's beneficial ownership, which will be in addition to the certifications of continuing use otherwise required by the Department of Finance.

ISSUE:

You have requested rulings as to whether:

1. XXXXX qualifies as an entity whose real property would be exempt from real property tax pursuant to section 420-a of the RPTL.
2. Property owned by single-member LLC, where the single-member XXXX, is a not-for-profit hospital, will qualify for a RPTL section 420-a exemption.

CONCLUSION:

1. Real property owned by XXXXX is exempt from the real property tax since XXXX is organized or conducted for hospital purposes under RPTL section 420-a.
2. Based on the facts provided, real property owned by XXXX will continue to be exempt from the real property tax while held by a single-member LLC where the single member is XXXX and the property continues to be used exclusively for hospital purposes. Provided that the LLC meets the criteria established below and the property based on ownership and use would otherwise qualify for a section 420-a exemption, the organizational form would not preclude exemption.

DISCUSSION:

RPTL section 420-a provides tax exemptions for mandatory classes of not-for-profits as follows:

[r]eal property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association provided shall be exempt from taxation as provided in this section.

There are essentially three tests that must all be satisfied for a section 420-a tax exemption: ownership by a nonprofit; organization for one or more of the exempt purposes specified in the statute; and use of the property for exempt purposes. XXXXX is a New York not-for-profit hospital corporation recognized by the IRS as qualifying for federal tax-exempt status under section 501 (c)(3) of the Code. The 10 floors currently leased at XXXXXXXXXX Street that will be purchased as commercial condominium units are and will continue to be used for the support and benefit of XXXX. Accordingly, there is no question that lots XXXXXX would be entitled to a 420-a exemption if the entire 10 commercial units were owned and used by XXXX for hospital purposes.

The critical question is whether the ownership of the ten commercial condominium units by a single-member LLC in which XXXXX is the sole member will continue to be exempt under section 420-a, provided the space continues to be used for the support and benefit of XXXXX. As the statute specifically requires ownership by a corporation or association, the first issue is whether a limited liability company is a “corporation or association organized or conducted exclusively for” an exempt purpose pursuant to RPTL section 420-a.

A limited liability company is defined by section 102(m) of the New York State Limited Liability Company Law (“LLCL”) as “an unincorporated organization organized of one or more persons having limited liability for contractual obligations and other liabilities of the business (...), other than a partnership or trust formed and existing under this chapter and the laws of this state.” In Mohonk Trust v. Board of Assessors of Town of Gardiner, 47 N.Y.2d 476 (1979), the Court of Appeals held that a trust was an association within the meaning of section 421 (predecessor to section 420-a). The court then said that “[w]hatever the meaning of the term ‘corporation or association’ in another context, the phrase has long been understood in tax exemption statutes of this sort ... simply, to indicate that the particular organization granted the exemption need not be incorporated. Although the word ‘corporation’ is strictly defined in the law, the word ‘association’ is a broad term which may be used to include a wide assortment of differing organizational structures including trusts, depending on the context.” 47 N.Y.2d at 482-83. Therefore, the term ‘association’ appears broad enough to include a limited liability company.

IRS regulations permit a single-member LLC to be disregarded from its owner for federal income tax purposes, in which case the entity would be treated as a branch or division of the owner. Therefore, an owner that is exempt from taxation under section 501 (a) of the IRC must include, as its own, information pertaining to the finances and operations of a disregarded entity in its annual information return (Form 990) IRS Announcement 99-102 (October 13, 1999).

Under federal “check-the box” regulations, a single member LLC is disregarded as a separate entity from the owner unless the owner affirmatively elects corporate tax treatment. Treas. Reg. Section 301.7701-3(b)(1)(ii) 2001. Hence a single member LLC is considered “invisible” for tax purposes. The information provided indicates that neither XXXX nor the LLC will make this election and for federal tax purposes, the real property will be treated as though XXXX owned it directly. Thus for federal tax purposes, the single member LLC will have no tax status of its own and will be treated as a branch of an exempt hospital institution.

In this arrangement, the LLC will own the property but the space will continue to be used for the support and benefit of XXXX. Where a separate not-for-profit “operates solely to carry out a purpose of the exempt corporation” and the property is used exclusively to benefit a separate exempt organization, the Court of Appeals has held that property may be exempt under section 420-a even though title is held by a related not-for-profit organization, St. Joseph’s Properties v. Srogi, 51 N.Y. 2d 127, 129 (1980); In the Matter of Canton Human Services Initiatives, Inc. v. Town of Canton, 4 Misc. 3d 413, 780 N Y S 2d 714

(2004). Although here the related organization is a single member LLC, not a not-for-profit corporation, the reasoning remains applicable. “While exemption statutes should be construed strictly against the taxpayer seeking the benefit of the exemption, an exemption so literal and narrow that it defeats the exemption’s settled purpose is to be avoided.” Symphony Space v. Tishelman, 60 N.Y.2d 33 (1983); In the Matter of Legion of Christ, Inc. v. Town of Mount Pleasant, 1 N Y 3d 406, 774 N Y S 2d 860 (2004).

It must be considered, however, that the LLC is not statutorily a not-for-profit entity. LLCL section 201 states that “[a] limited liability company may be formed under this chapter for any lawful business purpose or purposes....” The term “business” is defined as “every trade, occupation, profession or commercial activity.” See LLCL section 102(e). The Practice Commentary to the LLCL notes that “although the LLCL does not expressly prohibit the formation of not-for-profit LLCs, the definition of ‘Business’ in section 102(e) ...suggests that the drafters intended that a LLC was to be formed for pecuniary profit,” LLCL Practice Commentary at 3 (McKinney 2007). Accordingly, to retain the exemption, the LLC’s articles of organization and/or operating agreement, as appropriate, should provide an organizational purpose consistent with section 420-a and specify that the LLC could not receive pecuniary profit or otherwise operate in any manner inconsistent with a not-for-profit organization.

Therefore, property owned by a single-member LLC where the single member is a not-for-profit hospital, may qualify for a RPTL section 420-a exemption where the applicant establishes that it meets the following standards:

1. The LLC’s sole member qualifies for a section 420-a exemption. The LLC must also show that it is effectively a not-for-profit entity, organized or conducted for section 420-a purposes.
2. The articles of organization and /or operating agreement, as appropriate, must state there will be no pecuniary profit and the LLC will operate for not-for-profit purposes consistent with section 420-a.
3. There must be commonality between management of the LLC and its single member.
4. The property must be managed and maintained by the single-member.
5. Rent may not exceed carrying, maintenance and depreciation charges as specified in section 420-a.
6. Upon termination of the LLC, the property must revert to XXXX or another exempt entity. Also transferring any interest in the LLC to a non-qualifying entity will result in loss of exemption.
7. Both the LLC and XXXX must annually file an affidavit stating that there has been no change in the LLC’s beneficial ownership. This affidavit will be in addition to the certification of continuing use otherwise required by the Department of Finance.

Upon transfer of the property to the LLC, a 420-a application must be filed with the Exemption Unit. However, based upon the facts and representations and assuming the standards established above are satisfied, the property would qualify for exemption under the hospital category of RPTL section 420-a. The foregoing conclusions are based solely on the facts and representations set forth above as provided to the Office of Legal Affairs. The Department of Finance reserves the right to review the information submitted.

Very truly yours,

Dara Jaffee
Assistant Commissioner
Legal Affairs Division

HGT:hgt