



February 13, 2009

Re: Request for a Ruling
Real Property Tax Law § 420-a Exemption
FLR-08-4886

Dear Mr. _____ :

This is in response to your request dated February 21, 2008, on behalf of _____ for a letter ruling regarding the application of § 420-a of the Real Property Tax Law ("RPTL") to a leasehold condominium, created by _____ on an underlying ground lease. On November 3, 2008, attorneys from the law firm of _____ submitted a Memorandum of Law, setting forth additional information concerning the structure of this transaction. On December 31, 2008, pursuant to a request by the Department of Finance ("Finance") you submitted to Finance, selected articles from the June 6, 2007 ground lease (the "Lease") entered into between _____ and _____.

FACTS:

The facts that we have relied upon for this letter ruling are based on the Memorandum of Lease dated June 6, 2007, selected articles from the June 6, 2007 Lease submitted to Finance, as well as representations made by _____ in the above mentioned Memorandum of Law dated November 3, 2008. At the time of application for exemption, additional documentation may be requested to verify those actions yet to be taken by _____ in support of the exemption request.

_____ is a not-for profit corporation organized or conducted for educational purposes, and is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code. _____ is currently a tenant pursuant to the Lease of premises located at _____. The Lease has a base period of thirty-five years and _____ has the option to extend the Lease for six 10 year periods. Pursuant to the Lease, _____ has a leasehold interest in the land (the "Land") and has acquired title to the improvements (the "Improvements"). Section 5.1(b) of the Lease provides that "[t]he parties acknowledge that following completion of any New Improvements, Tenant shall hold title to the Improvements until the expiration of the Term."

_____ is in the process of completing a reconstruction of the entire building located at _____ Street (including the construction of additional floors). _____ has advised Finance that _____ expects to spend approximately 80 million dollars in order to convert the building from a parking garage into a first-class research laboratory. The Lease further provides that _____ is solely responsible for all maintenance and property related expenses including paying all taxes assessed against the property.

The Lease grants the right to use the property for any legally permitted uses other than residential and has indicated that intends to utilize the property for general office, medical research and education uses. The Lease further provides that may create a leasehold condominium and indicates that intends to create a leasehold condominium comprised of two (2) units, which units will be owned in fee for the term of the Lease.

ISSUE:

May a real property tax exemption pursuant to § 420-a of the RPTL be granted to property owned by that is in the form of a leasehold condominium, where the condominium declaration requires the unit owner to pay all taxes attributable to its units?

CONCLUSION:

Based upon applicable law regarding leasehold condominiums, real property owned by in the form of a leasehold condominium including the leasehold of the land will be eligible for an exemption pursuant to § 420-a of the RPTL.

LAW:

RPTL § 420-a provides a tax exemption for mandatory classes of nonprofit organizations in pertinent part 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 as hereinafter provided shall be exempt from taxation as provided in this section.

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 2. “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 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 owning a unit held under a lease or sublease.

In addition, 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:

is a not-for profit corporation, organized or conducted for educational purposes. The property in issue will be used by to carry out its educational and scientific exempt purposes. As the statute specifically requires ownership of real property by a corporation or association organized for exempt purposes, the sole issue is whether ownership of condominium units in the form of a leasehold condominium, constitutes ownership of real property for purposes of § 420-a of the RPTL.

Under the Condominium Act, a condominium unit, which is devoted exclusively to a non-residential purpose, can be formed on property held by a condominium declarant either in fee or under leasehold with a remaining term of 30 years or more. has entered into a lease with for a minimum term of 35 years, whereby will own the building located at Street and have a leasehold interest in the land. During the term of the lease on the land, will utilize the property for general office, medical research and education use. As a result, each condominium unit will be condominium units devoted exclusively to non-residential purposes. Therefore, the land held under the leasehold will be deemed to be property for purposes of the RPTL.

Once the contemplated declaration is filed, will own two units in fee simple for the term of the lease. Generally, the condominium form of ownership is manifested as a division of a single parcel of real property into individual units and common elements in which an owner holds title in fee to his individual unit as well as an undivided interest in the common elements of the parcel. See, Murphy v. State of New York 14 A.D. 3d 127, 787 N.Y.S. 2d 120 (2d Dept. 2004). The condominium ownership interest for units will include title to each unit and the unit's respective common interest, including an undivided percentage interest in the common elements, which includes the underlying leasehold of the land. Consequently, since RPL § 339-g provides that each unit, together with its common interest, constitutes real property, it follows that the underlying leasehold of the land constitute real property for purposes of RPTL § 420-a.

With regard to separate taxation, the Lease provides that is required to pay the taxes assessed on each of its units. Pursuant to RPL § 339-y (1) (a) each unit and its common interest is deemed to be a tax parcel. 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, Finance will be required to assess each unit together

with its common interest in the leasehold as a single tax parcel. Hence, as the owner of two units in the leasehold condominium will be assessed the full value of each unit, which will include the unit's pro rata share of all of the common elements, one of which is the land.

RPTL § 420-a provides an exemption for real property owned by a corporation or association organized or conducted for an exempt purpose provided the property is used to carry out such exempt purpose. Consequently, a not for profit that does not own the property but is merely a lessee pursuant to a long term lease is not eligible for an exemption. However, we have determined that as the owner of two (2) condominium units created on an underlying ground lease with a term of 35 years or more is eligible for exemption from taxation pursuant to RPTL §420-a.

To receive its exemption will be required to file an application with the Exemption Unit. If the documents and facts presented at the time of the application are consistent with the representations made to Legal Affairs for the purposes of this letter ruling, the tax parcels consisting of the condominium units and their respective common interests should be granted an exemption pursuant to RPTL § 420-a.

Notwithstanding the analysis and conclusions discussed above, Finance reserves the right to review the information submitted.

Very truly yours,

Dara Jaffee
Assistant Commissioner
Legal Affairs Division

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