



April 17, 2009

RE: Request for a Ruling
Real Property Tax Law §420-a Exemption
FLR-084882

Dear Mr. _____ :

This is in response to your request dated February 21, 2008, on behalf of _____ for a ruling regarding the application of §420-a of the Real Property Tax Law ("RPTL"), following a conveyance of seven separate parcels owned by _____ to seven separate single-member limited liability companies ("LLCs"). _____ will be the sole member of each LLC. The properties currently leased by _____ to affiliated organizations will continue to be leased by the LLCs to the affiliated organizations.

In addition, _____ requested a letter ruling for a parcel located at _____ Avenue, Bronx, New York (block lot) owned by _____, leased to _____ and then subleased to an affiliate of _____. This parcel was also to be transferred to a single member LLC of _____ which _____ was the sole member. On July 14, 2008 your client withdrew its request for a letter ruling as to the leased property. Hence, this letter ruling makes no representations as to the leased parcel.

On September 11, 2008 the Department issued a letter ruling to _____ concerning the conveyance of seven separate parcels owned by _____ to seven separate single member LLCs.

On November 20, 2008 _____ submitted a request to revise the September 11, 2008 letter ruling.

On January 12, 2009, _____ submitted copies of six leases entered into between _____ and various affiliated organizations. One of the leases entered into between _____ and the _____ indicated that two separate properties and not one as previously indicated by _____ were covered by the lease. As a result, _____ now requests that the revised letter ruling include an eighth parcel owned by _____ that will be conveyed to an eighth LLC.

FACTS:

_____ is a not-for-profit corporation organized and conducted exclusively for charitable, educational, and mental or moral improvement purposes. It has been recognized as exempt from federal, state and local income and sales taxation. _____ mission includes humanitarian assistance to people in need and furtherance of education. Many _____ of services are provided through affiliated organizations, which receive financial and other assistance from _____. Among these affiliated organizations are several _____ Community Centers, YM-YWHAs and other community organizations that operate facilities providing a cluster of educational,

community and recreational services.

currently owns eight parcels of real property in New York City for purposes of this letter ruling. One property, located at (block lot), is used by as its headquarters offices.¹ The other seven properties are used by affiliated organizations to operate facilities that further the mission of . All of the leased properties have facilities for active sports and recreation, such as swimming pools, basketball and tennis courts, and exercise rooms. The properties are limited in their use to charitable, educational, and mental or moral improvement purposes by means of lease or occupancy agreements between and its affiliated not-for-profit organizations, and would continue to be used for the aforementioned purpose by the same affiliated not-for-profit organizations after the proposed transfers. The leases and/or occupancy agreements between and its affiliates provide that the affiliates will make payments that do not exceed the carrying, maintenance and depreciation charges attributable to the premises occupied.

The locations and occupants of the properties are as follows:

<u>Borough</u>	<u>Block</u>	<u>Lots</u>	<u>Occupant</u>	<u>Address</u>
Manhattan				
Manhattan				
Brooklyn				
Queens				
Queens				

Under their current ownership by , all of the properties have been granted exemption from real property taxes pursuant to RPTL §420-a. The property located at in Queens (block lot) is 83% exempt. The other properties are fully exempt.

In order to preserve its assets for charitable use, experts on risk management have advised to isolate the liability risks associated with the operation of its properties. proposes to do this by conveying each of the eight parcels to separate single-member limited liability companies, in which would be the sole member.

Representations: represents that the transfer of each of the eight properties to individual single member LLCs, will be subject to the following conditions:

1. Each LLC will be organized exclusively for charitable, educational and mental or moral improvement purposes.
2. will be the sole member of each LLC.
3. There will be commonality between the management of each LLC and its single member.
4. Neither nor any of the LLCs will elect to treat the LLC as a corporation and thus each LLC will be considered a unit of for income tax purposes.

¹ For purposes of this letter ruling, the Street building does not pose an issue of first impression.

5. The organizing documents of the LLC will not permit the transfer of any interest in the LLC or its assets to an individual or for-profit entity.
6. The organizing documents will provide that in the event of dissolution, the assets of the LLC will revert to _____ or to another not-for-profit entity organized for charitable, educational or mental or moral improvements purposes.
7. The organizing documents of each LLC and any management agreement, lease or occupancy agreement will provide that the property transferred to the LLC shall be operated on a not-for-profit basis and used to further the purposes of _____ and its not-for-profit affiliates.
8. No rent or other payments for occupancy shall exceed the carrying, maintenance and depreciation charges attributable to the premises occupied.
9. Upon transfer of the eight parcels of property, each of the LLCs will apply to the Department of Finance for an exemption from real property taxation and establish the qualifications of the LLC as a not-for-profit association organized and conducted in the manner and for the purposes specified in RPTL §420-a.
10. Each LLC will comply with the requirements of the Department of Finance for periodic renewal of the exemption.

ISSUES:

- Whether real property owned by a single-member LLC and used exclusively for charitable, educational, and/or moral or mental improvement purposes by _____ as its headquarters will be exempt pursuant to RPTL §420-a after the property is transferred to the LLC?
- Whether real property owned by a single-member LLC, that is leased to an affiliated not for profit organization and used exclusively for charitable, educational and/or mental or moral improvement purposes will be exempt pursuant to RPTL §420-a, after the property is transferred by _____ to the LLC?

CONCLUSIONS:

With regard to the property used as _____ headquarters, the real property will continue to be eligible for a tax exemption after transfer to the single member LLC.

Based on our analysis, the other seven properties leased to affiliated not-for-profit organizations and used exclusively for charitable, educational and/or mental or moral improvement purposes, will also be exempt from taxation while held by a single-member LLC.

DISCUSSION:

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.

As the statute specifically requires ownership by a corporation or association, the initial inquiry is whether a limited liability company is a “corporation or association organized or conducted exclusively for” an exempt purpose pursuant to RPTL §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, 418 N.Y.S. 2d 763 (1979), the Court of Appeals held that a trust was an association within the meaning of section 421 (predecessor to §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 _____ nor the LLC will make this election and for federal tax purposes, the real property will be treated as though _____ 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 charitable institution.

Each LLC will own the property transferred to it by _____. One parcel will be used by _____ as its headquarters. The other seven parcels of property will continue to be used for the support and benefit of via leases to various affiliated not-for-profit corporations. No amount of rent or payment for occupancy will exceed the carrying maintenance and depreciation charges attributable to the premise occupied. See, Sisters of St Joseph v. City of New York, 49 N.Y.2d 429, 426 N.Y.S. 2d 444 (1980) where the Court of Appeals ruled that realty rented by one not-for-profit to another not-for-profit may retain its exempt status, so long as the rental does not produce profit. Moreover, 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 courts have held that property may be exempt under § 420-a even though title is held by a related not-for-profit organization, St. Joseph’s Health Center Properties v. Srogi, 51 N.Y. 2d 127, 129, 432 N.Y.S. 2d 865 (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, 466 N.Y.S. 2d 677 (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 §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 §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 §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 §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 organization, may qualify for a RPTL §420-a exemption where the applicant establishes that it meets the following standards:

1. The LLC’s sole member qualifies for a §420-a exemption. The LLC must also show that it is effectively a not-for-profit entity, organized or conducted for §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 §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 or, pursuant to a lease or occupancy agreement with the single member LLC, another not-for-profit entity, whose real property, if it owned any, would be exempt from taxation pursuant to sections §420-a or §420-b.
5. Rent paid by -affiliate lessees may not exceed carrying, maintenance and depreciation charges as specified in §420-a.
6. Upon termination of the LLC, the property must revert to 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 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 each property to a single-member LLC where the single-member is , a §420-a application must be filed with the Exemption Unit. If the facts upon transfer of the properties to the eight LLCs conform with the representations made by to the Legal Affairs Division and the conditions established pursuant to this letter ruling are satisfied, each property would qualify for exemption under the charitable, educational and /or mental or moral improvement category of RPTL §420-a.

The Department of Finance nevertheless reserves the right to review the information submitted.

Very truly yours,

Alan S. Roth
Deputy General Counsel
Legal Affairs Division

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