

December 12, 2001

Re: Request for Ruling
Commercial Rent Tax

FLR-014784-007

Dear _____ :

This is in response to your request for a ruling received on _____, 2001, regarding the application of the New York City Commercial Rent Tax (CRT) to the office space that the (“Taxpayer”) has leased at _____, New York, New York (the “Taxpayer’s premises” or the “premises”). Additional information was received on _____, 2001.

FACTS

The facts presented are as follows:

The Taxpayer is a non-profit membership organization exempt from federal income taxes under section 501(c)(4) of the Internal Revenue Code (IRC). You have represented that the Taxpayer exists to _____ . In furtherance of these objectives, the Taxpayer engages in education and advocacy activities and provides services and programs for _____ .

In addition to the Taxpayer’s activities in the United States, the Taxpayer is increasingly involved in _____ issues and related activities on a worldwide basis. Accordingly, the Taxpayer has opened a separate International Activities office located at _____ (the “International Office”). The International Office represents the Taxpayer as an advocate at the United Nations on _____ issues, and works with other non-governmental organizations to promote the awareness of _____ issues on a worldwide basis. This International Office is not involved in any unrelated business activities, and it does not produce any publications or materials.

The Taxpayer also leases two additional locations at _____ : 1) Its state office on the floor (the “State Office”), and 2) the editorial office for its publication _____ on the floor (the “Editorial Office”). The Editorial Office was the subject of Finance Letter _____

Ruling (FLR) 014774-007 issued on May 16, 2001. Additional facts regarding the Editorial Office are set forth therein.

You have represented that the Taxpayer's State Office is used to provide program support and implementation, training and resources to its volunteers and chapters in New York State. You have further represented that the State Office is not involved in any unrelated business activities and or in the production of any materials or publications. You have also represented that the Taxpayer occupies no other space at the premises located at .

ISSUE

You have requested a ruling as to whether the Taxpayer's use and occupancy of the International Office is exempt from the CRT. As discussed below, the Taxpayer's exemption request for the International Office necessarily requires the Department to consider if the Taxpayer's use and occupancy of its International Office, State Office and Editorial Office must be treated as one combined premises for purposes of the CRT exemption, and if so, whether the combined premises are exempt the CRT.

CONCLUSION

We have concluded that the Taxpayer's use and occupancy of its International Office, State Office, and Editorial Office, each located at , taken together, constitute the use and occupancy of one, combined premises for CRT purposes. We have also concluded that the combined premises are not taxable premises under the CRT, and, therefore, are not subject to the CRT. FLR-014774-007 is hereby modified and superceded to the extent that the facts and conclusions therein are inconsistent with this letter.

DISCUSSION

The CRT is imposed on a tenant who occupies, uses, or intends to occupy or use premises in New York City for "carrying on or exercising any trade, business, profession, vocation or commercial activity...." Administrative Code of the City of New York ("Code") §§11-701(5), 11-701(7) and 11-702(a). A "tenant" is defined as a "person paying or required to pay rent for premises as a lessee, sublessee, licensee, or concessionaire." Code § 11-701(3). The use and occupancy of two or more locations in the same building are treated as a single premises for purposes of the CRT. See Title 19 of the Rules of the City of New York (RCNY) § 7-01. The Taxpayer is clearly a "tenant" of the combined premises under Code section 11-701(3). Hence, the Taxpayer's use and occupancy thereof will be subject to the CRT if the Taxpayer occupies or uses the combined premises in connection with a "trade, business, profession, vocation, or commercial activity..." and the Taxpayer is not otherwise exempt from the CRT. Code § 11-701(5).

Code section 11-704(a)(4) exempts from the CRT any organization "organized and operated exclusively for religious, charitable, or educational purposes, or for the

prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation....” The Taxpayer does not qualify for the exemption under code section 11-704(a)(4), because the Taxpayer is exempt from federal income taxation under IRC section 501(c)(4), as a not for profit organization operated exclusively for the promotion of social welfare, and not as an educational, charitable or religious organization under IRC section 501(c)(3).

According to the Taxpayer, its International Office represents the Taxpayer on matters at the United Nations and works with non-governmental organizations to promote awareness of issues internationally. The Taxpayer has represented that its State Office is used to provide program support and implementation, training and resources to its volunteers and chapters. Neither the International Office nor the State Office is involved in any unrelated business activities or in the production of any periodicals or materials. The Editorial Office is used for the editorial staff and activities of the publication, but the advertising activities for that publication are conducted at a separate office in a separate building, and not at . Accordingly, whether the Taxpayer’s use and occupancy of the combined premises are exempt from the CRT turns on whether the Taxpayer’s various activities at the combined premises constitute a business, trade, profession or commercial activity.

Under 19 RCNY section 7-06, all premises are presumed to be taxable. The tenant bears the burden of proof in showing that the tenant does not use its premises in connection with the conduct of a business, trade, profession or commercial activity. See 19 RCNY § 7-06. However, with certain exceptions not relevant here, premises used or occupied by an organization exempt under IRC section 501 are presumed not to be taxable premises unless the premises are used “substantially in connection with an unrelated trade or business,” as described in IRC section 513. 19 RCNY § 7-06.

The Taxpayer has represented that its International Office and its State Office are not involved in any unrelated business activities or in the production of any periodicals or materials. Moreover, the Department previously concluded that the Taxpayer’s activities concerning the Editorial Offices were not substantially in connection with an unrelated trade or business. See FLR-014774-007 (May 16, 2001). Accordingly, under 19 RCNY section 7-06, based on the information and representations submitted, the Taxpayer’s use of the combined premises, consisting of the International Office, the State Office and the Editorial Office, is presumed not to be connected with a trade or business, and, therefore, is not subject to the CRT.

The Department reserves the right to verify the information submitted. In addition, you must notify the Department immediately if there is any change in the nature of the activities conducted on any part of the Taxpayer’s combined premises, or if the Taxpayer uses or occupies any other locations at . You must also notify the Department

immediately if the circulation income from the publication is ever treated as unrelated business taxable income for federal income tax purposes.

Sincerely,

Devora B. Cohn
Associate Commissioner
For Legal Affairs