

April 27, 2000

Re: Ruling Request
Commercial Rent Tax
FLR #: 004759-007

Dear Ms. _____ :

This letter responds to your request received March 9, 2000, for a ruling as to the New York City tax consequences of the rental arrangement described below.

Ruling Requested

You have requested a ruling that the New York City Commercial Rent or Occupancy Tax (the "CRT") will not apply to the rental of a portion of a building owned by 1000 X Street LLC ("LLC") to Company A, a related party, for a nominal rent such as \$100 per month.

Facts

The facts as represented by you may be summarized as follows:

LLC owns the building and land located at 1000 X Street in New York City (the "building").¹ LLC intends to borrow funds from a third party secured by its interest in the building (the "Loan").

LLC proposes to lease a portion of the building to Company A, a related entity. The lease will provide for a nominal rent such as \$100 per month. There will be no payments or other consideration from Company A to or on behalf of LLC that reasonably could be construed as being paid in lieu of rent, or if such amounts are paid, they will not exceed an amount that would be subject to the

¹ We assume that the building is located in the borough of Manhattan south of 96th Street.

CRT. Company A will not guarantee the Loan. However, if LLC defaults on the Loan and the third party lender becomes entitled to the income from the building (because a receiver is appointed, the mortgage securing the loan is foreclosed or the building is transferred to the lender in lieu of foreclosure or any other reason under the terms of the Loan documents) the rent to be paid by Company A will increase to a market rent.

Conclusion

Based upon the facts and representations presented, in our opinion, Company A will not be subject to the CRT on the amount of rent paid to LLC where that amount is below the amount of annual or annualized rent subject to the CRT. The CRT will apply at such time, if any, that the rent payable by Company A increases to a market rent that is equal to or greater than the amount then subject to the CRT.

Discussion

The CRT is imposed under Title 11, Chapter 7 of the Administrative Code of the City of New York (the "Code"). Code section 11-704(b)(2) provides that for taxable years beginning on or after June 1, 1997 a tenant whose annual or annualized base rent is less than \$100,000 is exempt from the tax. Code section 11-701.7 defines rent as the consideration paid or required to be paid by a tenant for the use or occupancy of premises "valued in money, whether received in money or otherwise, including all credits and property or services of any kind and including any payment required to be made by a tenant on behalf of his or her landlord for real estate taxes, water rents or charges, sewer rents or any other expenses (including insurance) normally payable by a landlord who owns the realty other than expenses for the improvement, repair or maintenance of the tenant's premises." The definition of "rent" contained in section 7-01 of the Rules of the City of New York further provides that "If the occupancy is gratuitous and without consideration in any sense of the word, no tax is payable.

Based on the applicable law and rules and the facts presented, Company A will not be subject to the CRT with respect to the lease described above from LLC so long as the amount of rent payable by Company A to or on behalf of LLC, including any amounts that reasonably could be construed as paid in lieu of rent,

do not exceed an amount that would be subject to the CRT. This ruling does not address any filing obligations of Company A under the CRT.

Very truly yours,

Devora B. Cohn
Associate Commissioner for Legal
Affairs