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## Department of Finance Confirms Leasehold Condominium § 420-A Property Tax Exemption Eligibility for Nonprofits

By Erica Buckley, Ruben Ravago, and Ari Glatt

Section 420-a of the New York State Real Property Tax Law (the RPTL) provides a tax exemption from real property taxes to nonprofit organizations (organized for the religious, charitable, hospital, educational, or for the mental and moral support of men, women, and children) that own property in New York. Typically, the RPTL § 420-a exemption is not available to nonprofits that lease their properties as tenants since they do not “own” the real property and merely are lessees. For example, if a nonprofit is a lessee of an entire property under a net lease or ground lease, it would still have to pay all of the property’s real estate taxes since it does not own the fee interest.

However, by using commercial leasehold condominiums to turn their leasehold interests into condominium units, nonprofit tenants can benefit from this innovative arrangement to obtain exemptions from real property taxes.

### Department of Finance Private Letter Ruling.

In an October 2019 private letter ruling,<sup>1</sup> New York City’s Department of Finance has confirmed that a real estate tax exemption under RPTL § 420-a is available to eligible owners of units in a leasehold condominium and that ownership of a condominium unit in the form of a leasehold condominium constitutes ownership of real property for purposes of the RPTL § 420-a exemption.

In ruling that a nonprofit holding title to a unit in a leasehold condominium with at least a 30-year lease term is entitled to the RPTL § 420-a exemption, the Department of Finance echoed both the reasoning and the outcome on that issue found in its 2009 private letter ruling on similar facts.<sup>2</sup>

Moreover, the new ruling also confirmed that a nonprofit seeking a layer of liability protection may form an affiliate to take title to the leasehold condo unit, with the affiliate then leasing the unit back to the nonprofit, without upsetting its eligibility for the RPTL § 420-a exemption. Following a 1980 Court of Appeals case,<sup>3</sup> the Department of Finance concluded that, so long as the affiliate-landlord is also a nonprofit and the arrangement does not produce a profit, the lessee’s nonprofit status (and, therefore, RPTL § 420-a eligibility) remains intact.

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<sup>1</sup> FLR-19-4999, October 15, 2019.

<sup>2</sup> FLR-08-4886, February 13, 2009.

<sup>3</sup> *Sisters of St. Joseph v. City of New York*, 49 N.Y.2d 429, 426 N.Y.S. 2d 444 (1980).

Finally, the new private letter ruling also concluded that a nonprofit's RPTL § 420-a eligibility is not jeopardized when a for-profit subsidiary of the sponsor owns a separate leasehold condominium unit in the same condominium. This confirms the general understanding that for-profit ownership of other units within a leasehold condominium does not upset the RPTL § 420-a eligibility of a nonprofit unit owner in the same project, including where the for-profit entity is an affiliate of the sponsor.

### **Structuring Leasehold Condominiums Takes Careful Planning.**

Structuring a leasehold condominium project in a way that allows nonprofits to take advantage of RPTL § 420-a, while ensuring other development objectives and timing requirements are met, takes careful planning and execution. Ensuring the lease is drafted appropriately, obtaining the “no action” letter from the New York Attorney General, and making sure the condominium documents and tax lot drawings align with operational goals, all benefit from the guidance of experienced professionals.

Nixon Peabody's full-service Cooperatives and Condominiums practice team stand ready to work with eligible nonprofits in exploring the feasibility of forming a leasehold condominium for RPTL § 420-a eligibility purposes. For more information on Nixon Peabody's full-service Cooperatives and Condominiums practice, please visit [here](#) or contact:

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