



**CITY OF  
PHILADELPHIA LAW  
DEPARTMENT  
TAX & REVENUE UNIT**

January 27, 2023

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**RE:** [REDACTED], Philadelphia, PA

Dear [REDACTED]:

On behalf of [REDACTED], c/o [REDACTED] you requested a ruling from the City of Philadelphia through the Tax Unit of the Law Department and the Technical Staff of the Revenue Department in connection with the Philadelphia Realty Transfer Tax ("Philadelphia RTT".) We were asked to consider whether the City will accept a one-time Philadelphia RTT payment in a two-phase transaction wherein the above rental affordable housing property (the "Property") was acquired by your client, with the intention that it will be renovated for continued use as affordable housing using Federal Low Income Housing Tax Credit (LIHTC) program financing. The LIHTC program will require a long-term affordability restrictive agreement (typically 15-30 years in duration) in favor of PHFA, which restrictive agreement will be recorded against the Property. This Opinion Letter confirms the Law Department's position that the Phase 2 transactions, provided they occur in the manner and timeframe as set forth herein, shall not be considered a taxable event(s) for purposes of Philadelphia RTT.

In rendering this opinion set forth below, we examined and ruled upon the following representations you have made to us as counsel to [REDACTED], c/o [REDACTED]. This opinion is dependent on the facts as we have been given them and we have done no independent investigation.

You have represented that the LIHTC program is administered in Pennsylvania by the Pennsylvania Housing Finance Agency ("PHFA"). The LIHTC program requires that a for-profit entity own the Property, and that the partners who provide the equity which qualifies the development for the tax credits are generally admitted as limited partners in the ownership entity and have limited or no operational control of the development. PHFA imposes significant requirements and monitors compliance with those requirements related to the LIHTC program.

The Property was acquired by a limited partnership controlled by your client in [REDACTED]. The participants in the original transaction were the seller and initial owner of the Property, [REDACTED] ("Seller"), and your client's limited

partnership, [REDACTED], ([REDACTED]). [REDACTED] is a limited partnership initially comprised of a general partner, [REDACTED] ([REDACTED]% General Partner) ("GP"), and a placeholder limited partner, [REDACTED] ([REDACTED]% Limited Partner) ("Placeholder LP"). At the time of the [REDACTED] transaction the following phases were contemplated:

Phase 1:

On [REDACTED], [REDACTED] purchased the Property from Seller, for \$ [REDACTED]. City and State transfer taxes were paid based on the purchase price at the time of this transaction. City transfer tax was \$ [REDACTED].

Phase 2:

In order to facilitate the rehabilitation of the Property for ongoing use as affordable housing, there would be a second financing related closing at which time tax credit equity would be paid into the LP as approved for the LIHTC program. An investor ("Investor B") would acquire the approved LIHTC tax credits, and pay its equity into the LP in exchange for the tax credits. At this time Investor B was to replace Placeholder LP as the sole limited partner of the LP, and Placeholder LP was to exit the LP.

The original intention in [REDACTED] was that Placeholder LP would be replaced in Phase 2 of the transaction by the single "Investor B", as purchaser of tax credit equity, due to delays caused by the PHFA tax credit process, and the current PHFA requirements of the LIHTC program, you advised that to date your client has been unable to secure the Phase 2 tax credit financing through PHFA, and that your client may now be required to obtain the tax credit financing in two separate Phase 2 closing events. Each of those Phase 2 closings will require the payment of equity, by the investor in that particular phase (i.e. Investor B and Investor C), to the Property owner. Each of the two Phase 2 closings will involve pay-in of between 40% and [REDACTED]% of the total tax credit qualified equity, with the second of the closings involving pay-in of the balance of the equity not paid in at the initial Phase 2 closing. At the time of each pay-in closing for Phase 2, that investor will be admitted to the ownership entity with a pro-rata share of the [REDACTED]% Limited Partner interest.

In addition to the change, Phase 2 will now require the admission of two tax credit investors. Due to the delay in securing PHFA financing, [REDACTED], the original owner of the Property as of [REDACTED], will need to be replaced by a new affiliated entity (name of entity to be determined), sometime in [REDACTED]. This will be a paper transfer only, and no money or other consideration will be exchanged as part of this entity change. The first Phase 2 tax credit financing closing is expected to occur in [REDACTED], with the second Phase 2 tax credit closing projected to occur sometime in [REDACTED].


After review, based on the foregoing scenario, in which the investor limited partners obtain the [REDACTED]% interest in the Limited Partnership, and the only effect of the Phase 2 transactions is to allow the infusion of tax credit equity and the necessary change in the membership composition of the LP to facilitate such infusion, it is the Opinion of the Law Department, together with Revenue Technical Staff, that the Phase 2 transactions, provided they

occur in the manner and timeframe as set forth herein, shall not be considered a taxable event(s) for purposes of the City's transfer tax.

This opinion is given to you as of the date hereof, and we express no opinion as to any matter not expressly set forth herein. We have not made any independent investigation of the facts as represented by you, and this opinion is void if any relevant fact has not been represented. By rendering this opinion, we do not undertake any obligation to advise you of any change in law or facts that may occur or come to our attention after the date hereof.

This opinion letter is directed only to [REDACTED] c/o [REDACTED] [REDACTED] as it relates to the above-mentioned transaction(s). This opinion letter is not intended to have nor does it have precedential value. We offer no assurance that we would reach the same conclusion with respect to other transfers. It is solely for the benefit of [REDACTED] c/o [REDACTED] and no other person may rely upon it without prior written consent.

Sincerely,

  
Frances R. Beckley, Esquire  
Chief Counsel, Department of Revenue

Cc: Steven Wakefield, Deputy City Solicitor Law Department  
Mary-Kate Martin, Deputy City Solicitor Law Department  
Lauren Zrillo, Assistant City Solicitor, Law Department