Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > (2005-2009) Rulings >



# Letter Ruling 08-9: Business Trust/Hospital Construction Project

May 13, 2008

You have requested a letter ruling on behalf of ************************************, a Massachusetts charitable corporation organized in accordance with General Laws chapter 180 and exempt from federal income tax under Internal Revenue Code (IRC) § 501(c)(3). Specifically, you ask whether purchases of building materials and supplies used in the construction of a new ambulatory building owned by a business trust that has two non-profit corporations as its only owner-beneficiaries will be exempt from the sales tax imposed under G.L. c. 64H, § 2.

## I. FACTS

The following is your representation of the facts upon which we base this letter ruling. ******** is a charitable corporation formed to "establish and maintain a hospital…providing health care services for all persons…and to promote the general health and welfare of the community." ********************************** Trust will be a Massachusetts business trust created by ******* under a Declaration of Trust executed in Massachusetts and in accordance with G.L. c. 182. ******* chose the business trust form for several reasons. A flow-through entity for income tax purposes is attractive to investors; the business trust form of organization allows ***** Trust to elect partnership treatment under the federal entity classification rules. In addition, a business trust allows some level of liability protection for the beneficiaries of the trust while maximizing funding the project through use of new markets tax credits[1]and tax exempt bonds. The business trust form is appropriate for this project because it allows ****** to use both types of financing while receiving loans from ***** and a group of investors organized by *********. Ultimately, ***** Trust will receive approximately $53 million in funding from ****** and approximately $17 million from *********. In return, ************* will receive a 39% tax credit over 7 years.

***** Trust will be wholly owned by ******* and ***************************, or an affiliate controlled by *****. Like *****, *****, or such affiliate, if applicable (which also may be referenced as ****** herein), is a non profit corporation organized in accordance with G.L. c. 180 and exempt from federal income tax under IRC § 501(c)(3). ***** will own 90% and ***** or its affiliate will own 10% of ***** Trust. Pursuant to the trust document, the shares of the trust will be non-transferable. For this reason, ****** Trust cannot by definition be a "corporate trust" for Massachusetts income tax purposes. *See* G.L. c. 62, § 1(j). Therefore, while ****** Trust is not seeking a letter ruling on its Massachusetts income tax classification, it expects that the trust will likely be treated as a partnership for Massachusetts income tax purposes. The trustee of ***** Trust will be *******.

***** Trust intends to construct a new ambulatory care building (the "Building") with a projected cost estimated at $180,000,000. The Building will be built by ****** Trust on a parcel of land owned by ********* located at *******, Boston, Massachusetts. ******** has been leasing the land at the proposed site from ***** since 1996. ****** Trust will sublease the land from ******* during construction of the Building. Upon completion, ****** Trust will own the Building but ********* will occupy and lease the Building from ******* Trust. The land will continue to be owned by *******.

****** Trust will only participate in business transactions that are related to the charitable purposes for which the trust was formed. In addition, these transactions and ********'s other activities are ones which ****** and ******, the trust's tax-exempt owner-beneficiaries, could have engaged in directly without jeopardizing their § 501(c)(3) status. ****** intends to provide medical services organized as multidisciplinary service lines that are delivered in a clinical model. The clinics that will be located in the Building will be related to primary care, orthopedics, urology and certain administrative functions, such as patient financial services. The operation of ******** clinics in the Building will not result in ******* subleasing any space in the Building to any other entity. However, the clinics will be staffed by practice plans, which are separate legal entities that are affiliated with *******. The plans are non-profit, tax-exempt corporations organized and operated exclusively for the benefit of *******.

## II. RULING REQUESTED

Pursuant to G.L. c. 64H, § 6(f), the building materials and supplies used in the construction of the Building will be exempt from the sales tax imposed under G.L. c. 64H, § 2.

## III. DISCUSSION

Generally, sales of tangible personal property and certain services are subject to the sales tax under G.L. c. 64H, § 2. However, purchases of building materials and supplies may be exempt from the sales tax if they are to be used in the construction, reconstruction, alteration, remodeling or repair of any building or structure owned by or held in trust for the benefit of any corporation, foundation, organization or institution described in chapter 64H, § 6(e) and used exclusively in the conduct of its religious, scientific, charitable or educational purposes. G.L. c. 64H, § 6(f).

In *Northgate Construction Company, Inc. v. State Tax Commission*, 377 Mass. 205 (1979), the Court considered whether materials and supplies purchased by a private for-profit developer in the construction of two low-income housing projects were subject to the sales tax. The projects were built for the Malden Housing Authority but were owned by the developer during the construction period. *Id.* at 208. Based on the fact that the project was not owned by or held in trust for the Malden Housing Authority, the Court determined that the sales of building materials and supplies were not exempt from the Massachusetts sales tax. *Id.* at 209.

The Department has ruled that the requirement that the building or structure be "owned by or held in trust for a non-profit entity as described in G.L. c. 64H, § 6(e)" is strict. For instance, in Letter Ruling 87-16, the Department ruled that the imposition of the sales tax on materials and supplies used in the rehabilitation of two public housing developments for a local housing authority under a so-called "turnkey project" was proper. The materials and supplies purchased by the contractor for the rehabilitation of the project were subject to the sales tax because the exemption provided under G.L. c. 64H, § 6(f) did not apply. This was so because the property being rehabilitated was not owned by or held in trust for the local authority during the construction period. *See* Letter Ruling 87-16.

The Department reached a different conclusion in Letter Ruling 01-13. That case involved a non-profit § 501(c)(3) corporation that was formed for the construction, development, operation and sale of affordable housing within the Commonwealth of Massachusetts. The non-profit formed several entities for the purpose of acquiring and constructing the project. The result was that an LLC and Limited Partnership were tenants in common as to the project through the vehicle of a nominee trust. The non-profit was the sole member of the LLC, which was a disregarded entity for federal and state income tax purposes. The Limited Partnership was a Massachusetts Limited Partnership with a corporate general partner and a corporate limited partner, both wholly owned by the non-profit. The Realty Trust was formed as a "nominee trust" and did not pay tax. The beneficial interests in the trust were owned solely by the LLC and the Limited Partnership, which were solely owned by the non-profit. We ruled that since the building materials and supplies were continually used exclusively in the conduct of the non-profit's charitable purposes, and since during the entire construction project the property was "owned by or held in trust for" the non-profit, the purchase of building materials and supplies was exempt from the sales tax under G.L. c. 64H, § 6(f).

In the present case, ******* is a § 501(c)(3) corporation and therefore a non-profit entity as described in chapter 64H, § 6(e).  ******* created ******* Trust for the purpose of building and holding the interest to the Building at *****, located at ****************** Boston, Massachusetts.  During the entire construction period and after the project is completed, the Building itself will be owned by ******* Trust, a Massachusetts business trust.  The purpose of the business trust is to maximize funding needed for construction of the Building through the use of new markets tax credits and tax exempt bonds.  During the entire construction of the Building, the beneficial owners of ****** Trust will be ****** and ******, each of which is a non-profit charitable corporation exempt from federal income tax under IRC § 501(c)(3).  ********** Trust will be involved only in transactions that ****** and ******* themselves could be involved in while maintaining their § 501(c)(3) status.  Therefore, the Department rules that as long as these facts remain true, the purchases of materials and supplies for construction of the Building are exempt from sales tax pursuant to G.L. c. 64H, § 6(f).[2]  If for any reason one of the beneficial owners is no longer classified as a § 501(c)(3) entity, the exemption will no longer apply to purchases of materials and supplies that are to be used in the construction of the Building.

## IV.  CONCLUSION

The Building proposed by ******** is and will continue to be owned by or held in trust for  ****** and ****** during the entire construction period.  Purchases of building materials and supplies that are to be used in construction of the Building are therefore exempt from the sales tax, providing the purchases otherwise qualify under G.L. c. 64H, § 6(f).

Very truly yours,

/s/Navjeet K. Bal

Navjeet K. Bal
Commissioner of Revenue

NKB:MTF:mw

LR 08-9

---

[1] The new markets tax credit was created by IRC § 45D to increase investments in low income communities.

[2] *Also see* DOR Directive 02-16 for general limitations on the exemption in G.L c. 64H, § 6(f).