



City of Chicago
Richard M. Daley, Mayor

Department of Law
Mara S. Georges
Corporation Counsel

Suite 1020
30 North LaSalle Street
Chicago, Illinois 60602
(312) 744-5100
(312) 744-3989 (FAX)
(312) 744-5131 (TTY)
<http://www.ci.chi.il.us>

April 28, 2011

Mr. Warren Silver
Silver Law Office
1700 West Irving Park Road, Suite 102
Chicago, Illinois 60613

Re: Chicago Real Property Transfer Tax

Dear Mr. Silver:

We are responding for your request for an opinion confirming that two deeded transfers of the property located at [REDACTED] Chicago (the "Property"), expected to occur on or about May 2, 2011, will be exempt from the Chicago Real Property Transfer Tax Ordinance, Chapter 3-33 of the Chicago Municipal Code (the "Code"). Your request is made in a letter dated April 21, 2011, and supplemented by emails to me on April 27 and 28, 2011. Copies of the letter and the emails are enclosed without their attachments.

The Chicago Real Property Transfer Tax Ordinance, Chapter 3-33 of the Chicago Municipal Code (the "Code"), imposes a tax upon the privilege of transferring title to, or beneficial interest in, real property located in the city. Code Section 3-33-030(B) provides that "the tax imposed by this chapter is due upon the earlier of the delivery or recording of the deed, assignment or other instrument of transfer." Code Section 3-33-060(G) exempts "transfers in which the deed, assignment or other instrument of transfer releases property which secures debt or other obligations." Code Section 3-33-060(C) exempts "transfers in which the deed, assignment or other instrument of transfer secures debt or other obligations."

As stated in your letter and email, the two transfers are necessary for [REDACTED] ("Network"), the true owner of the Property, to obtain a refinance of its obligations currently outstanding with [REDACTED] ("GSDC") in accordance with Islamic religious law. Network will obtain new financing with [REDACTED] ("UIFC"), a [REDACTED] corporation engaged in the business of financing transactions structured to comply with Islamic religious law.

The religious proscriptions of the Islamic faith generally prohibit followers from borrowing money where the lender charges interest. Lenders have devised alternative financing strategies, one of which is identified as ijarah financing. In an ijarah transaction, the lender usually purchases and takes title to the subject property and then leases the property to the borrower. The rental



Mr. Warren Silver
April 28, 2011
Page 2

payments under the lease are analogous to what payments of principal and interest would be under loan entered into at the time of the lease. At the end of the lease, or at the time of the borrower's payment of the option price under the lease, the property is deeded to the borrower.

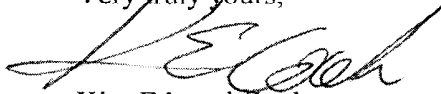
Network purchased and financed its purchase of the Property using ijarah financing. In 2006, GSDC purchased the Property on behalf of Network and Network and GSDC entered into a Net Lease Agreement, which had a purchase option. Because Network is a 501(c)(3) entity, no transfer tax was due on its purchase of the Property. GSDC transferred title to the Property to a trust, [REDACTED] being the trustee under Trust Number [REDACTED] the "Trust", and GSDC being the beneficiary.

To complete the refinance, the Trust will transfer title to the Property to Network; Network will simultaneously transfer title to [REDACTED]; and Network and [REDACTED] will simultaneously enter into a Lease. The terms of the Lease and its adjustable rider are essentially the new financing terms. The Trust, Network, and [REDACTED] will file Chicago Real Property Transfer Tax declarations regarding these two deeded transfers. The Trust and Network will claim an exemption under Code Section 3-33-060(G) for the transfer of title from the Trust to Network. Network and [REDACTED] will claim an exemption under Code Section 3-33-060(C) for the transfer of title from Network to [REDACTED].

Based on the above, the transfers of title of the Property from the Trust to Network and from Network to [REDACTED] are exempt from the Chicago Real Property Transfer Tax. The opinions contained herein are expressly intended to constitute written advice that may be relied upon pursuant to section 3-4-325 of the Chicago Municipal Code.

If we may be of further assistance, please call me at (312) 744-1436.

Very truly yours,



Kim Edward Cook

Encl.

cc: Weston W. Hanscom
Michael P. Luzzi
Gary Michals

Silver
Law office

Warren E. Silver
Stacey Rubin Silver

April 21, 2011

Tax Policy Section
Department of Revenue
City of Chicago
Room 300, DePaul Center
333 S. State St.
Chicago IL 60604-3977

Re: Request for Private Letter Ruling
[REDACTED]

Dear Tax Policy Section:

This office represents [REDACTED] which is a wholly-owned subsidiary of [REDACTED] ("UIFC"), a [REDACTED] corporation engaged in the business of financing transactions structured to comply with the requirements of Shari'a, or Islamic religious law.

Under Shari'a, payment or receipt of interest is sharply restricted. A consequence of this restriction is that conventional financing secured by a mortgage on real estate is not permissible to observant Muslims. In order to meet demands for both residential and commercial financing of real estate transactions for observant Muslims, UIFC has developed financing products structured to comply with Shari'a.

At this time, UIFC proposes to enter into a Shari'a compliant financing transaction with [REDACTED] (the "Borrower"), for premises located at [REDACTED] Chicago, Illinois (the "Property"), pursuant to which UIFC would refinance Borrower's existing obligation with respect to the Property (the "Transaction"). The Transaction is structured as an *ijara* transaction, which is the Arabic term for a lease-to-own financing transaction. At this time, the Property is already subject to an *ijara* financing transaction.

Under the standard *ijara* transaction, the lender purchases and takes title to the subject property and then leases the subject property to the borrower. The borrower also has the right to purchase the property from the lender at a set price, which corresponds to the amount loaned to the borrower in a conventional transaction. The rent payments made by the borrower to the lender contain a component for the use of the property (analogous to interest, and calculated to match the prevailing market interest rate at the time of the transaction; this component of rent may be variable, as with a variable interest loan, or fixed) and a component that reduces the purchase price on exercise of the purchase right, analogous to principal reduction. The analogue to the down payment of a conventional transaction is made at the commencement of the transaction as an initial rent payment. Upon full amortization of the financing transaction – i.e., when the purchase right's price is reduced through rent payments to zero – the property is conveyed from the lender to the borrower.

In the instant case, the Property is currently owned by a land trust, the beneficiary of which is the entity currently financing the Property for the Borrower (the "Prior Financer"). In contemplation of the

Tax Policy Section
Department of Revenue
City of Chicago
April 21, 2011
Page 2

Transaction, UIFC has formed [REDACTED]. For the Transaction, [REDACTED] would purchase the Property from the Prior Financer and lease the Property to the Borrower under an *ijara* lease. The purchase of the Property would be consummated pursuant to an assignment to [REDACTED] of the Borrower's purchase right under the existing *ijara* that Borrower had entered into with the Prior Financer. This purchase price is analogous to the payoff amount to retire a conventional mortgage loan, and the funds used by [REDACTED] to purchase the Property are analogous to the loan amount under a conventional refinancing mortgage loan. The Borrower would enter into a new *ijara* lease of the Property with [REDACTED]. However, to comply with Shari'a, and unlike a conventional mortgage loan refinancing, there is a transfer of title from the old lender (the Prior Financer) to the new lender ([REDACTED]).

At this time, [REDACTED] and UIFC seek a ruling that the transfer of title from the Prior Financer to [REDACTED] for the purchase price provided under the Prior Financer's *ijara* transaction is exempt from the City of Chicago Real Property Transfer Tax under Chicago Municipal Code Section 3-33-060(C) with respect to [REDACTED], in that the deed conveying the Property to [REDACTED] is solely for the purpose of securing debt or other obligations of Borrower to [REDACTED] and under Chicago Municipal Code Section 3-33-060(G) with respect to the Prior Financer, in that the same deed releases the Property from debt or other obligations of Borrower to the Prior Financer. The reason for this request is that, notwithstanding the transfers of title, the transactions contemplated by [REDACTED] as described herein do not change the party having the typical indicia of ownership (i.e., the Borrower occupies the Property, is responsible for its maintenance, repair, insurance, etc.) and the transactions operate functionally as a financing mechanism and not as a transfer of equitable ownership of the Property.

In connection with this request, we have enclosed copies of the following documents:

- Lease
- Adjustable Rate Rider to Lease
- Agreement to Provide Insurance
- Memorandum of Lease (for recording)
- Promise to Purchase
- Net Lease Agreement with Prior Financer
- Amendment to Net Lease Agreement with Prior Financer (payoff statement)

Please contact me with any questions or requests for additional documents or information. Thank you for your cooperation.

Yours very truly,



Warren E. Silver

cc: [REDACTED] UIFC
Kim Cook, Department of Law

RE: [REDACTED]

Page 1 of 3

RE: [REDACTED]

Warren Silver [warren@silverlawoffice.com]

Sent: Thursday, April 28, 2011 9:43 AM
To: Cook, Kim
Cc: [REDACTED]
Attachments: [REDACTED] 501c3 Letter.pdf (21 KB) ; [REDACTED] requested~1.pdf (617 KB)

Items 1 and 2 were on pages 9-11 of the .pdf file I emailed you yesterday – I've attached it again for your convenience.

Item 3 is also attached – a letter from the IRS dated July 31, 2006 confirming [REDACTED]'s 501(c)(3) status back to 1999.

Warren E. Silver
Silver Law Office
Suite 102
1700 West Irving Park Road
Chicago, Illinois 60613
tel. 773.832.9550
fax 773.832.9552

CONFIDENTIALITY INFORMATION

This e-mail message contains confidential and privileged attorney-client communication and is intended solely for the use of the party to whom it is addressed. If you are not the party to whom this email message is addressed, be advised that you are prohibited from disclosure, copying, distribution or use of the contents of this email message and that you should delete this email message and all copies thereof immediately from all devices and media in your possession or control. If you have received this email in error, please notify us immediately.

From: Cook, Kim [mailto:kim.cook@cityofchicago.org]
Sent: Wednesday, April 27, 2011 5:04 PM
To: Warren Silver
Cc: [REDACTED]
Subject: [REDACTED]

Thank you. This helps clean things up, but there are three more things I need: (1) the Deed transferring the property from GSDC to the Trust, (2) the Trust agreement, and (3) evidence that Network is a 501(c)(3) corporation.

From: Warren Silver [warren@silverlawoffice.com]
Sent: Wednesday, April 27, 2011 3:58 PM
To: Cook, Kim
Cc: [REDACTED]
Subject: [REDACTED]

Kim –

With reference to the request for a private letter ruling I submitted April 21, 2011 on behalf of the above-captioned entity, regarding property located at [REDACTED] copy attached for your convenience), there is a slight adjustment to the facts as presented:

Rather than the Borrower assigning its purchase right under the old lease to [REDACTED] (the new Lender) and the deed running directly from the Prior Financer to [REDACTED] the land trust currently in title will convey the property to the Borrower under the purchase right and the Borrower will immediately (recorded consecutively) transfer the property to the new Lender by quit claim deed.

I don't think that will make much difference as the practical effect of the transaction is the same; the first deed (to the Borrower) would be for the release of a security interest and the second would be for the granting of a security interest, and the parties would rely on the respective exemptions. We would do two declarations, one for each deed and each claiming the respective exemption.

Also, attached for your information are (1) the deed from the unrelated third party seller to the Prior Financer; (2) the Chicago transfer declaration that accompanies that deed; and (3) the deed from the Prior Financer to the land trust currently in title and trust agreement showing the Prior Financer as sole beneficiary and holder of the power of direction over the Land Trust. Note that no transfer tax was paid at the time of acquisition. The claimed exemption is based on the Prior Financer being a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

I agree that this is the correct exemption to have relied upon, but it was relied upon for the wrong reason, in that the Prior Financer is effectively a lender, not an owner. However, please note also that the Borrower, [REDACTED] was and is also a tax-exempt 501(c)(3) organization, and therefore was eligible for that exemption as well. Even though the Borrower was not nominally the grantee under the deed, it was and is the actual owner of the property for the reasons set forth in my letter of April 21.

In this case, however, because the party nominally going into title, [REDACTED], is not a 501(c)(3) organization, we are seeking the PLR. We maintain that the reason that [REDACTED] is going into title – the only reason – is to secure a loan, which because of the ijara transaction structure demanded by Islamic law, is secured by the deed coupled with a lease rather than by a conventional mortgage; the actual ownership of the property, as determined by typical indicia – right to possession, responsibility for maintenance and repairs, right to income, etc. – all remain with the same party – [REDACTED] the Borrower.

In other words, if the Borrower were not required by its members' religion to structure the transaction as an ijara, then the Borrower's acquisition of the Property in 2006 would have been exempt under 3(B), and the instant transaction, a refinance, would not involve a change in title-holding, but rather only the release of one mortgage and recording of another. We submit that the functionally identical transactions that actually occurred – the acquisition on behalf of the Borrower by the Prior Financer for ijara financing and then the conveyance from the Prior Financer to the Borrower and immediately to [REDACTED] for an ijara refinancing – should be treated the same way for the reasons set forth in my letter of April 21 and above.

Please call if you need any further documentation or have additional questions.
Warren

Warren E. Silver
Silver Law Office
Suite 102
1700 West Irving Park Road
Chicago, Illinois 60613
tel. 773.832.9550
fax 773.832.9552

CONFIDENTIALITY INFORMATION

This e-mail message contains confidential and privileged attorney-client communication and is intended solely for the use of the party to whom it is addressed. If you are not the party to whom this email message is addressed, be advised that you are prohibited from disclosure, copying, distribution or use of the contents of this email message and that you should delete this email message and all copies thereof immediately from all devices and media in your possession or control. If you have received this email in error, please notify us immediately.

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail (or the person responsible for delivering this document to the intended recipient), you are hereby notified that any dissemination, distribution, printing or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please respond to the individual sending the message, and permanently delete the original and any copy of any e-mail and printout thereof.