CITY OF CHICAGO
DEPARTMENT OF FINANCE
RULES AND REGULATIONS

Pursuant to Sections 2-80-030, 2-80-040, 3-4-030, 3-4-150 and 3-33-140 of the Chicago Municipal Code, I, Amer Ahmad, as Comptroller of the City of Chicago Department of Finance, do hereby adopt and promulgate Real Property Transfer Tax Ruling #4, as set forth below, effective May 15, 2012.

Dated: April 30, 2012

Amer Ahmad

Amer Ahmad
Comptroller
Department of Finance

CITY OF CHICAGO
DEPARTMENT OF FINANCE
<u>REAL PROPERTY TRANSFER TAX RULING</u>

Real Property Transfer Tax Ruling #4
Subject: Exemptions C & M
Effective Date: May 15, 2012

Section 1. <u>Background.</u> The Chicago Real Property Transfer Tax ("Transfer Tax" or "Tax") Ordinance, Chicago Municipal Code ("Code") Chapter 3-33, provides as follows:

a. <u>The Tax.</u> Code Section 3-33-030(A) imposes the Tax on "the privilege of transferring title to, or beneficial interest in, real property located in the city, whether or not the agreement or contract providing for the transfer is entered into the city." The amount of the Tax is based on the "transfer price ... of the real property or the beneficial interest in real property." <u>Id</u>. The Tax is generally due "upon the earlier of the delivery or recording of the deed, assignment or other instrument of transfer." Code Section 3-33-030(B).

b. <u>Exemption C.</u> There is an exemption from the Tax for "[t]ransfers in which the deed, assignment or other instrument of transfer secures debt or other obligations." Code Section 3-33-060(C). When a bona fide lender acquires a mortgage on property owned by a person from to whom the lender lends money, the lender has acquired a beneficial interest in the real property through the mortgage. However, Exemption C exempts the transfer of the mortgage from the Tax. Mortgage transactions are so common that bona fide lenders seldom claim the Exemption C upon their acquisition of mortgages, and the Department of Finance has never required them to do so.

c. Exemption M. There is an exemption from the Tax for "[t]ransfers in which the deed or other instrument of transfer is issued to the mortgagee or secured creditor pursuant to a mortgage or security interest foreclosure proceeding or sale or pursuant to a transfer in lieu of foreclosure." Code Section 3-33-060(M).

d. Proof of exemptions. As with other exemptions, the burden is on the taxpayer to prove, with written evidence, that the taxpayer is entitled to this exemption. See, e.g., Code Sections 3-4-130, 3-4-340; Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305 (1976); West Belmont, L.L.C. v. City of Chicago, 349 Ill. App. 3d 46 (1st Dist. 2004).

e. Rules and regulations. The Director of the Department is authorized to adopt, promulgate and enforce rules and regulations pertaining to the administration and enforcement of the Tax. Code Section 3-33-140.

Section 2. Exemption C Ruling. The intent of Exemption C is to ensure that the Tax is not paid when a bona fide lender acquires a mortgage or other security interest in real property for the purpose of securing repayment of a loan from the lender. Absent the exemption, bona fide lenders would be taxed merely for protecting themselves from loss due to nonpayment of their loans. Bona fide lenders, such as banks, credit unions, and mortgage companies, are not in the business of holding interest in property for investment or development and only acquire mortgages to protect themselves from nonpayment of their loans. The City Council does not deem it appropriate that these lenders be required to pay the Tax when protecting themselves through mortgages. In enacting Exemption C, the City Council did not intend to benefit a non-lender who takes an assignment of a mortgage or other security interest for the primary purpose of obtaining title to the property for developing, investing in, or using the real property itself. For example, where a real estate developer or investor takes an assignment of a mortgage from a bona fide lender that has commenced foreclosure proceedings or otherwise notified the owner of the property that the owner is in default on a loan, the transfer of the mortgage to the developer or investor will not qualify for Exemption C and will instead be subject to the Tax. To determine whether Exemption C applies, the Department will review each transfer based on its particular facts.

Section 3. Exemption M Ruling. The intent of Exemption M is to ensure that the Tax is not paid when a bona fide lender take title to, or beneficial interest in, real property for the purpose of obtaining repayment of a loan from the lender, usually through a foreclosure because the Tax must be paid when the lender sells the property to a third party. Absent the exemption, bona fide lenders would be taxed merely for protecting themselves from loss due to nonpayment of their loans. Bona fide lenders, such as banks, credit unions, and mortgage companies, are not in the business of holding property for investment or development and only acquire real property when enforcing their rights under mortgages. The City Council does not deem it appropriate that these lenders be required to pay the Tax when enforcing such rights. In enacting Exemption M, the City Council did not intend to benefit a non-lender who takes an assignment of a mortgage or other security interest for the primary purpose of obtaining title to the property for developing, investing in, or using the real property itself. For example, where a real estate developer or investor takes an assignment of a mortgage from a bona fide lender that has commenced foreclosure proceedings or otherwise notified the owner of the property that the owner is in default on a loan, the transfer of the real property to the developer or investor will not qualify for Exemption M and will instead be subject to the Tax. To determine whether Exemption M applies, the Department will review each transfer based on its particular facts.

Section 4. Relationship of Exemption C & M Rulings. No investor or developer in real property shall be required to pay the Tax on both its acquisition of the mortgage and its acquisition of title to or beneficial interest in real property. The amount that the investor or developer pays the bona fide lender for the mortgage and the note secured by the mortgage is the "transfer price" for Tax purposes. Although the Tax would generally be due upon the investor's or developer's acquisition of the mortgage, for administrative purposes, the Tax shall be paid on the earlier of the delivery or recording of the deed, assignment, or other instrument of transfer.

Section 5. Advance opinions. Anyone interested in obtaining an advance opinion from the Department should refer to Uniform Revenue Procedures Ordinance Ruling #3, regarding Private Letter Rulings. Anyone desiring to close on a transaction before an advance opinion can be obtained may pay the Tax under protest and apply for a refund, pursuant to Code Section 3-4-100.

Section 6. This Ruling is a restatement and not a change of current law, and the effective date of this Ruling has no effect on the enforcement of the Chicago Real Estate Transfer Tax for periods prior to or subsequent to the effective date.