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September 24, 2015

Re: Request for Letter Ruling
New York City Real Property Transfer Tax
Block: Lots: and
FLR No.: 15-4973/RPT

Dear _____ :

This letter responds to your request, dated _____, on behalf of Mr. _____ (the "Taxpayer") for a ruling that the transfer of units physically joined but for which the necessary permits to do this combination were not filed with the Department of Buildings should be treated as the transfer of an individual residential condominium unit for purposes of the New York City Real Property Transfer Tax (the "RPTT").

FACTS

The facts presented are as follows:

The Taxpayer is the surviving tenant by the entirety of Unit _____ and Unit _____ (the "Units") at _____ in Manhattan. The Taxpayer moved into the Units in the late 1950s. Upon information and belief, the Taxpayer obtained permission from his landlord in the late 1950s to knock down a wall between the two units and to convert one of the kitchens into the laundry room. Although the Units were physically combined, permits for the combination were not filed with the Department of Buildings. The building subsequently converted to condominium ownership in the 1980s. The Taxpayer and his wife closed on the purchase of the Units on _____, 1989. The Taxpayer's wife passed away in 2011.

The Taxpayer entered into a Contract for Sale of the Units (the "Contract") dated _____, to sell the Units together. The term "unit" as used in the Contract refers to both units. The Purchaser is buying the units with the intention to legalize the combination into one condominium unit after the closing. Further, the Contract provides that the closing on the sale of both units will occur

simultaneously and neither party will have the right to sell or purchase less than both units together (Contract Paragraph 35). Additionally, the Contract states that a default to purchase or sell any of the units will constitute a default as to the other unit. Id.

In support of your application you have submitted a copy of the deeds and the floor plan of the Units showing a three bedroom unit with a den and one kitchen that appears to be functionally one apartment.

ISSUE

You have requested a ruling the transfer of the Units by the Taxpayer will be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for the transfer.

CONCLUSION

Based on the facts presented, we conclude that the transfer of the Units by the Taxpayer should be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for the transfer.

DISCUSSION

The RPTT applies to each deed conveying an interest in New York City real property when the consideration for the real property interest exceeds \$25,000. Section 11-2102(a) of the New York City Administrative Code (the “Code”). The tax rate depends on the amount of consideration and the type of property transferred. For “conveyances of one, two or three-family houses and individual residential condominium units” Code section 11-2102.a(9)(i) imposes a 1.0 percent rate where the consideration does not exceed \$500,000 and a 1.425 percent rate where the consideration is over \$500,000 (the “Individual Rate”). For “all other conveyances,” Code section 11-2102.a(9)(ii) imposes a 1.425 percent rate where the consideration does not exceed \$500,000, and a 2.625 percent rate where the consideration is over \$500,000 (the “Non-individual Rate”).

Individual residential condominium units. In Finance Memorandum 00-6REV (“FM 00-6”), Real Property transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units, September 8, 2011, the Department of Finance (the “Department”) addressed the issue of when the Individual Rate applies to a transaction in which a single grantor transfers more than one individual cooperative apartment or condominium unit to a single grantee. Such transactions, described as bulk sales, are generally taxed at the Non-individual Rate because those transfers are not transfers of an “individual” apartment or unit under Code section 11-2101.a(9).

In FM 00-6, the Department revised its earlier position that in order to qualify for the Individual Rate, adjacent cooperative apartments or residential condominium units must have been physically combined into a single residence. The revised finance memorandum discusses three cases decided by the New York City Tax Appeals Tribunal in which the transfers of multiple condominium units that were not physically joined were held not to be bulk sales and, thus, qualified for the Individual Rate. The revised Finance Memorandum states that the Department

will look to the facts and circumstances of the specific case when making a determination of whether there is a bulk sale.

In this case, the Units have been physically joined for many years. There is only one kitchen and it is clear from the floor plans submitted that the Units were intended to function as a one individual condominium unit. Therefore, this office has determined that based on the facts and circumstances, the transfer of the Units qualifies for the Individual Rate.

This opinion is based on the facts as presented. The Department of Finance reserves the right to modify its opinion in the event that the facts upon which this opinion is based are other than as described above.

Very truly yours,

Diana Beinart
General Counsel

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