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RE: Request for Ruling
Real Property Transfer Tax

FLR-16-4977-RPTT

Dear Mr:

This letter is in response to your request for a ruling dated January 15, 2016, regarding the applicable tax rate under the New York City Real Property Transfer Tax ("RPTT") for the sale transaction described below. Additional information was received on February 17 and April 7, 2016.

FACTS

You have represented that the Estate of _____ (the "Taxpayer") sold to the purchaser shares allocated to apartment units ("Units") 3 and 4 in a cooperative apartment building located in Manhattan. Units 3 and 4 are not physically connected. However, _____ (the "Decedent") lived in these Units 3 and 4 as one single residence from the time she purchased the shares allocated to these Units in 1970 until she passed away in 2014.

The buyers of the shares allocated to the Units 3 and 4 have purchased them with the intent to physically combine these Units. The sale of the shares for each Unit was made expressly contingent on the sale of the shares allocated to the other Unit. Also, the cooperative's managing agent issued one share certificate for the shares allocated to the Units and one proprietary lease applicable to these Units. The buyers obtained a proposal and a cost estimate from an architect to physically combine the Units. You have further represented that the cooperative's Board of Directors has approved physical combination, after which the combined Units will have only one kitchen. The cooperative's President has signed applications to obtain the New York City Buildings Department in connection with this combination.

ISSUE

Whether the Taxpayer's sale of to the above-described cooperative apartment units to the purchaser would be treated as the sale of an individual cooperative apartment so that the lower RPTT rate schedule, as provided in section 11-2102(b)(1)(B)(i) of the Administrative Code of the City of New York (the "Code"), applies?

CONCLUSION

We have determined, under the facts and circumstances presented, the sale of the above-described cooperative apartment units should be treated as the sale of an individual cooperative apartment subject to the lower tax rate schedule under Code section 11-2102(b)(1)(B)(i).

DISCUSSION

Section 11-2102 of the Code imposes the RPTT on the conveyance of real property or the transfer of an economic interest in real property located in the City where the consideration for the conveyance or transfer exceeds \$25,000. Code section 11-2102(b)(1)(B)(i) imposes a special lower rate for transfers of economic interests in "a one, two or three-family house, an individual cooperative apartment, an individual residential condominium" and certain other individual dwelling units. The RPTT rate for these transfers is 1 percent of the consideration if the consideration is \$500,000 or less, and 1.425 percent of the consideration if the consideration is more than \$500,000. Transfers of economic interests in real property, such as shares in a cooperative housing corporation, that do not qualify for this special lower rate, are subject to an RPTT rate of 1.425 percent of the consideration if the consideration is \$500,000 or less, and 2.625 percent of the consideration if the consideration is more than \$500,000. Code §11-2102(b)(1)(B)(ii).

Whether a sale is the sale of an individual cooperative apartment, subject to the lower rate schedule, or is the sale of multiple apartments (a "bulk sale"), subject to the higher rate schedule, will depend on the facts and circumstances of the particular situation. Finance Memorandum 00-6REV (revised 9/8/2011). In *Matter of Gruber*, TAT (E) 2003-7 (RP); TAT (E) 2003-8 (RP); TAT 2003-9 (RP), the taxpayer purchased three contiguous condominium apartments, which the sponsor had separated with temporary walls, with the full intent of combining the three apartments into one single apartment unit. Reasoning the taxpayer had acquired the property rights consistent with using the three apartments as a single condominium apartment unit, the New York City Tax Appeals Tribunal (the "Tribunal") concluded that the lower rate schedule applied. A similar principle should apply in the context of the sale of cooperative apartments. Code section 11-2102(a)(9), which imposes the RPTT on the conveyances of deeds, provides the same rate schedule that Code section 11-2102(b)(1)(B) provides for transfers of economic interests in real property, and is for all relevant purposes substantially the same as Code section 11-2102(b)(1)(B).

Here, the two cooperative apartment Units 3 and 4 have been used as a single residential dwelling for over 40 years. Moreover, as in *Gruber*, the purchasers fully intend to combine the Units. To this end, they obtained a proposal from an architect for this physical combination and have obtained the cooperative's Board's permission to do so. Accordingly, based on the above facts and representations, the sale of these apartment Units should be treated as the sale of an

individual cooperative apartment subject to the lower tax rate schedule under Code section 11-2102(b)(1)(B)(i).

The Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Sincerely,

Diana Beinart
General Counsel