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RE: NYC Real Property Transfer Tax
FLR-15-4975

Dear Mr

This is in response to your request for a ruling on behalf of (the “Taxpayer”) as to whether the transfer of the property located Street in Manhattan (the “Property”) qualifies for the lower residential tax rate of 1.425 percent applicable to one, two or three family homes (the “residential rate”) under the New York City Real Property and Transfer Tax (“RPTT”).

FACTS

The facts presented are as follows:

The Property is a Tax Class 1 building, classified as Building Code S1. It is a one family home with one office. Prior to the current conveyance of the Property, it has always been classified as residential. The Property is 6,000 square feet and approximately 17 percent of the Property, namely a portion of the ground floor, comprises a commercial space. With the exception of the ground floor commercial space, the remaining 83 percent of the Property is used for residential purposes. Further, the commercial space has only been rented out as a commercial space for the past 4 years. Prior to that point, the commercial space was utilized as part of the residential space as a home office.

You contend that the Department of Finance’s classification of the Property as Class 1 should be controlling for real property transfer tax purposes. As a result, the presence of the office should not prevent the Property from qualifying for the lower residential rate.

ISSUE

You have requested a ruling as to whether the Taxpayer's conveyance of the Property is subject to the rate of 1.425 percent applicable to the conveyance of a one, two or three family house where the consideration is more than \$500,000.

DISCUSSION

Section 11-2102 of the Administrative Code of the City of New York (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. For a conveyance of a one, two or three-family house or an individual residential condominium unit, the RPTT is imposed at a rate of 1.425 percent if the consideration is more than \$500,000. Code §11-2102(a)(9)(i). For all other types of conveyances, the rate is 2.625 percent where the consideration is more than \$500,000. Code §11-2102(a)(9)(ii).

Based on the facts presented, we have determined that the tax rate applicable to the conveyance is 1.425 percent because the Property is a one, two or three family house and is categorized for real property tax purposes in Class 1. Class 1 real property includes one, two and three family homes, including those that are "used in part for nonresidential purposes but which are used primarily for residential purposes," subject to certain exceptions not relevant here. See New York Real Property Tax Law §1802.1. The tax classification reflects that the Property is used primarily for residential purposes. The building Code S1 (primarily 1 family with 1 store or office) is consistent with the tax classification. In the absence of information suggesting the Department's classification of the Property as Class 1 is incorrect, that classification is controlling for RPTT purposes. As a result, the presence of an office occupying approximately 17 percent of the gross square footage of the building does not prevent the use of a reduced rate of 1.425 percent when calculating the RPTT due upon the conveyance of the Property.

The Department reserves the right to verify the facts submitted and to modify its decision accordingly.

Very truly yours,

Diana Beinart
General Counsel