



Department of Finance

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**RE: Request for Letter Ruling
Real Property Transfer Tax
FLR 23-5030 -- RPTT**

Dear XXXXX and XXXXXX,

This letter is in response to your request for a ruling, dated September 21, 2023, regarding which New York City Real Property Transfer Tax (“RPTT”) rate applies to the transfer of two cooperative units in a sale described below. With the request for a ruling, certificates of shares, Real Property Transfer Tax returns, sales contracts, and floor plans were submitted. Additional information was received on November 9, 2023, and November 14, 2023.

FACTS

On XXXX XX, XXXX, XXXXXXXX and XXXXXXXXXXX (“Taxpayers”) sold residential cooperative units XXX and XXX, located at XXXXXXXX, Brooklyn, New York 11201, to one buyer, XXXXX (“Purchaser”), for \$1,385,000. The Taxpayers purchased unit XXX in 1984 and unit XX in 1992. The units are adjacent to each other and were used by the Taxpayers as a single unit for their primary residence for more than 30 years. The units were combined by the creation of a doorway, which was accessible only from the two units, allowing free ingress and egress between the two units. This doorway was sealed prior to closing. The two units were marketed and sold together as one primary residence. The sale price for XXX was \$900,000 and the sale price for XXX was \$485,000. There were two separate contracts of sale and each stated that: (a)

the sale of the shares for each unit was contingent on the sale of the shares allocated to the other unit; and (b) the seller had the unilateral right to consolidate the contracts into one with a combined purchase price, combine the units into one cooperative unit with one share certificate and one proprietary lease, and reallocate the total combined purchase price of the two units. The Taxpayers filed NYC RPTT returns paying tax at a rate of 1.425 percent for the unit that sold for an amount greater than \$500,000, and 1 percent for the unit with a sale price less than \$500,000. The Purchaser intends to physically combine the two units. To accomplish the combination, the Purchaser has retained an architect and is interviewing contractors.

ISSUE

Is the Taxpayers' sale of the two units subject to the "bulk sale" RPTT rate or the lower rate applicable to the transfers of individual residential cooperative units?

CONCLUSION

The sale of the two cooperative units described above should be treated as a sale of an individual residential cooperative unit subject to the lower tax rate schedule, and therefore, the applicable tax rate of 1.425 percent is applied to the total consideration received.

DISCUSSION

Section 11-2102 of the Administrative Code of the City of New York (the "Code") states that a New York City tax is imposed on a transfer of real property if consideration for the transfer exceeds \$25,000. Code Section 11-2102(b)(1)(B)(i) states that the RPTT rate is 1 percent of the consideration for conveyances of an economic interest in a one, two, or three-family house, an individual residential cooperative unit, an individual residential condominium unit or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other if the consideration is \$500,000 or less, and 1.425 percent if the consideration is more than \$500,000. Code Section 11-2102(b)(1)(B)(ii) states that the RPTT rate is 1.425 percent of the consideration for all other conveyances if the consideration is \$500,000 or less, and 2.625 percent if the consideration is more than \$500,000.

The New York City Department of Finance ("Department") applies the higher transfer tax rate schedule to a transaction, often referred to as a "bulk sale," when a grantor transfers more than one residential condominium or cooperative unit to the same grantee. *See generally Emerson Unitrust v. Comm'r of Fin. of City of New York*, 16 A.D.3d 201 (1st Dept 2005). Finance Memorandum 00-6REV, dated September 8, 2011, clarifies further that the facts and circumstances of a particular case will determine whether a bulk sale has taken place. In *Matter of Rosenblum*, TAT (E) 2001-31 (RP), the Tribunal ruled that the sale of a residential condominium unit along with a separate condominium "suite unit" did not constitute a bulk sale. The suite unit in *Rosenblum*, though not physically combined with the residential condominium unit, constituted an integral part of a single residence. The New York City Tax Appeals Tribunal reached this conclusion by reasoning that, with limited exception, the suite unit could be owned only by a residential condominium unit owner and could only be used for residential purposes by

domestic employees, family members and nonpaying guests of the residential unit owner. In *Matter of Gruber*, TAT (E) 2003-7 (RP), TAT (E) 2003-8 (RP), TAT (E) 2003-9 (RP), the petitioner purchased three units intending to combine them into a single residence. In *Gruber*, the units at issue were not combined prior to closing; however, the interiors of the units were prepared with the minimal amount of outfitting to obtain a temporary certificate of occupancy, thus facilitating future combination, the offering plan of the condominium contemplated the combination of units, the petitioner prepared plans and obtained rights consistent with the combination of the units, and the work to integrate the units commenced after closing. For these reasons, the Tribunal held that for the purpose of the RPTT, the sale in *Gruber* did not comprise the conveyance of more than one residential condominium unit. Therefore, the sale should be taxed as a sale of a single residential condominium unit and the lower RPTT rate applied.

In the present case, the Taxpayers transferred to the Purchaser two adjacent units. The Taxpayers used the two units as a single residence for 31 years. During the Taxpayers' ownership, the units were combined by an internal doorway that was accessible only from the two units and allowed the owners free movement from one unit to the other. This doorway was sealed prior to closing. However, the Purchaser of the two units has manifested intent to physically combine them and is in the process of retaining an architect and contractors to begin work in 2024. Additionally, the Contract of Sale made the sale of shares for each unit expressly contingent on the sale of the shares in the other unit. Accordingly, based on the above facts and representations, the sale of these two cooperative units should be treated as a sale of an individual residential cooperative unit under Code Section 11-2102(b)(1)(B)(i).

Because cooperative units are not transferred by deed and because this transfer should be treated as a sale of an individual unit, the RPTT lower tax rate schedule will be applied to the consideration for the entire transfer and not separately to the consideration for each unit, as it would be applied in a deed transfer of two condominium units treated as an individual unit. Therefore, because the total sales price for the two units is greater than \$500,000, the RPTT rate of 1.425 percent applies to the total consideration received.

Notwithstanding the analysis and conclusions discussed above, the Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Sincerely,

Michael Smilowitz
General Counsel

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