



Department of Finance

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May 18, 2023

XXXXXXXXXX
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XXXXXXXXXX

**RE: Request for Letter Ruling
Real Property Transfer Tax
FLR 22-5021 -- RPTT**

Dear XXXXXXXX,

This letter is in response to your request dated April 14, 2022, inquiring which New York City Real Property Transfer Tax (“RPTT”) rate applies to the transfer of two condominium units in a sale described below. Additional information was received on June 13, 2022, July 5, 2022, and March 31, 2023.

FACTS

The taxpayers have sold two condominium units located at XXXXXX, New York, NY. One unit was a four-bedroom apartment unit number XXXX, which the taxpayers acquired in 1996 as a primary residence. Additionally, the taxpayers sold a studio apartment unit number XXXX, which was purchased by the taxpayers in 1998. When the taxpayers purchased unit XXXX, pursuant to the sales contract, the sponsor removed the kitchen and capped the plumbing and gas lines prior to closing, because the taxpayer always intended to use both units as one apartment. The taxpayers used the two units as one apartment for 24 years. Because the kitchen was removed from XXXXX, the unit could not be sold as a separate apartment unless the kitchen was reinstalled. XXXXX was used by one of the taxpayers as her home office for her business, XXXX XXXXX. Both units were sold to the same purchaser. The units were adjacent but not combined. The purchaser intended to combine the units, and as proof, the taxpayer provided a work permit from the Department of Buildings issued on XXXXXX, which listed as a description of the work to be performed, “Renovation & combination of condo apts. # XXX & #XXXX ... apartments combined in compliance with XXXXX.” The work permit shows that the two separate units will be combined when the work is completed.

ISSUE

Is the taxpayers' sale of the of units XXXXX and XXXX subject to the "bulk sale" RPTT rate schedule or the lower RPTT rate schedule applicable to the transfer of individual residential condominium units.

CONCLUSION

The sale of the two condominium units described above should be treated as a sale of an individual residential condominium apartment subject to the lower tax rate schedule, and therefore, the applicable tax rate is 1.425 percent.

DISCUSSION

Section 11-2102(a) 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(a)(9)(i) states that RPTT rate is 1 percent of the consideration for conveyances of one, two or three-family houses and individual residential condominium units if the consideration is \$500,000 or less, and 1.425 percent if the consideration is more than \$500,000. Code Section 11-2102(a)(9)(ii) states that the rate of RPTT 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 to a transaction, often referred to as a "bulk sale," when a grantor transfers more than one residential condominium unit to the same grantee. According to Finance Memorandum 00-6REV, dated September 8, 2011, the facts and circumstances of a particular case will determine whether a bulk sale has taken place. *In the 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. The units were not combined prior to closing, but the petitioner prepared plans for the combination of the units and the work commenced after closing. The New York City Tax Tribunal held that the sale should be taxed as a sale of a single residential condominium unit and that the lower RPTT rate applied.

In the present case, the taxpayer transferred to a grantee two units that are adjacent but not combined. The taxpayers used these two units as a single residence for 24 years. The kitchen was removed from one of the units, and the plumbing and gas lines were capped. The units could not be sold separately unless the kitchen was reinstalled. The taxpayer also provided the Department a copy of a NYC building permit showing that combination of condominium apartments # XXXX and XXXX was sought by the purchaser and approved by the Department of Buildings subsequently to the sale of the units. The two units will be physically combined into one apartment unit when this work is complete. Accordingly, based on the above facts and representations, the sale of these two condominium units should be treated as the sale of an individual residential condominium unit under Code Section 11-2102(a)(9)(i).

One of the taxpayers used the smaller unit as a home office, but that does not change the outcome. According to RCNY Section 23-03(b)(9), “an individual condominium unit that is used for residential purposes shall be presumed to be a residential condominium unit, unless such residential use is de minimis.” The present case is similar to Illustration (ii) in which an artist both resided and maintained a studio in his individual condominium unit. The unit was deemed a residential condominium unit, because the unit was used for residential purposes. Here, the taxpayer’s use of the second unit as a home office while using the first unit as a residence do not prevent this transfer from being taxed as a sale of a residential condominium unit, because the two units were used as one apartment. Therefore, the lower RPTT rate of 1.425 percent applies to the consideration, which is over \$500,000.

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

Sincerely,

Dara Jaffee
Assistant Commissioner for Legal Affairs

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