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March 28, 2014

Re: Request for Ruling
XXX
Real Property Transfer Tax
FLR: 13-4953

Dear XXX:

This letter responds to your request, dated December 3, 2013, on behalf of XXX (the "Taxpayers"), for a ruling that the transfer of two adjacent condominium units to be used as one unit 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 Property. This ruling addresses the Taxpayers' acquisition of two adjacent residential condominium units, XXX ("Unit 1") and XXX ("Unit 2") (referred to collectively as the "Units") at the XXX (the "Condominium") located XXX. As described below, the Units have since been combined into one unit (the "Property").

Purchase and renovation. On December 2, 2011, the Taxpayers entered into contracts to purchase Unit 1 and Unit 2 (the "Purchase Agreements") from XXX, the sponsor of the Condominium (the "Sponsor"). The Condominium was in an existing non-residential building being converted to residential condominiums, and the Taxpayers entered into the Purchase Agreements before the building was completed. Although the Condominium's offering plan offered the space as two units, they had never been occupied as separate units. The Taxpayers were only interested in the space as one larger unit. Taxpayers closed on both units on August 3, 2012, obtaining a single title insurance policy covering both units.

During negotiations of the Purchase Agreement, Taxpayers requested that the Sponsor combine the Units into a single Unit before the closing, but the Sponsor did not agree to do so. However, pursuant to the provisions of Paragraph 47 and 50 of each Purchase Agreement, the Sponsor (i) recognized and

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acknowledged that it was the Taxpayers' intention to combine the Units into a single unit following the closings, (ii) approved such combination on the condition that Taxpayers comply with all applicable requirements of the Condominium's Declaration and By-laws in connection herewith, (iii) agreed that the closings of the Units will occur simultaneously so that Taxpayers could be assured of owning both Units, and (iv) agreed that the Purchase Agreements will be cross-defaulted, so that in case of default by the Sponsor under either Purchase Agreement, Taxpayers should not have to choose either to acquire only the other Unit or default under the other Purchase Agreement and lose their down payment.

Before the closings, Taxpayers hired an architect to prepare plans for the physical combining of the Units. After the closings, Taxpayers made application to the Condominium's Board of Managers for consent to combine the Units and, subsequently received such consent. On December 7, 2012, following submission of the architect's plans to the City's Department of Buildings, together with an application for a building permit to combine the Units into a single unit, Taxpayers received the requisite building permit. By January 2, 2013, after a wall was broken through and one kitchen was removed, the Units were physically one unit. The kitchen was demolished by December 7, 2012, and the demolition break-through was done by December 12, 2012. After all the design finish work was completed to Taxpayers' satisfaction and Taxpayers' furniture was delivered, Taxpayers moved into the combined unit on July 13, 2013. The Condominium is in the process of (i) amending the Condominium Declaration to reflect the combining of Units 1 and 2 in a single Unit ("Unit 1-2") and obtaining a single tax lot number for Unit 1-2.

Tax matters. The Taxpayers reported the transaction as a bulk sale of two condominium units for consideration in excess of $500,000, resulting in an applicable tax rate of 2.625 percent, rather than the lower tax rate of 1.425 applicable to transfers of an individual residential condominium unit, as described more fully below.

ISSUE

You have requested a ruling that the transfer of Unit 1 and Unit 2 from the Sponsor to the Taxpayers should 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 upon the facts presented and the representations submitted, we conclude that the transfer of Unit 1 and Unit 2 from the Sponsor to the Taxpayers should be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for the transfer.

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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 (revised September 8, 2011) ("FM 00-6"), Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units, June 19, 2000, 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 11-2102.a(9).

In FM 00-6, the Department stated that to determine whether a bulk sale has taken place the Department will look to the facts and circumstances of the specific case. The Department cited three 2006 Tax Appeals Tribunal decisions as providing guidance on the issue of what constitutes a bulk sale: In The Matter of Cambridge Leasing, TAT (E) 2003-11 (RP); In The Matter of Rosenblum, TAT (E) 2001-31 (RP), and In The Matter of Gruber, TAT (E) 2003-7 (RP); TAT (E) 2003-8 (RP); TAT (E) 2003-9 (RP). Here, the facts presented closely resemble the facts address by the court in Gruber.

In Gruber, the taxpayers sought to acquire a floor of a condominium that had been presented in the offering plan as three separate units. Consistent with that Offering Plan, walls separated the floor into three different units. The purchase agreements contemplated that the taxpayers would purchase all three units and included cross-default provisions. Before the closing on the units, the taxpayers hired an architect to prepare plans for the combination of the units into one apartment. Separate closings for the Units subsequently took place. Following the closings, the construction work according to the architect's plans was carried out. The Tax Appeals Tribunal, affirming the Administrative Law Judge in part, held that, on the

facts of the case, the "[t]ransfers did not comprise the conveyance of more than one residential condominium unit." As a result, the transfer was subject to tax under the RPTT at the Individual Rate.

The facts presented here closely resemble those addressed in Gruber. The Condominium's offering plan identified the space as separate units, and they were marketed and shown that way. The units had never been used by residents as separate units. The purchase agreements contemplated that the Taxpayers would purchase all three units and included cross-default provisions. Before the closing on the units, the Taxpayers hired an architect to prepare plans for the combination of the units into one apartment and received permission from the City's Department of Buildings to combine the Units. By January 2, 2013, after a wall was broken through and one kitchen was removed, the Units were physically one unit.

After all the design finish work was completed to Taxpayers' satisfaction and Taxpayers' furniture was delivered, Taxpayers moved into the combined Unit on July 13, 2013. The Condominium is in the process of amending the Condominium Declaration to reflect the combining of Units 1 and 2 in a single Unit 1-2 and obtaining a single tax lot number for Unit 1-2. One title insurance policy covers Unit 1-2.

As a result, like Gruber, an examination of all of the applicable facts and circumstances reveals that the space, while nominally divided into separate units, was effectively one unit at the time of transfer. As a result, consistent with FM 00-6, the transfer should be treated as the transfer of an individual residential condominium unit and be subject to tax at the Individual Rate, 1.425 percent of the consideration.

Based upon the facts and representations submitted, we conclude that the transfer of the Property from the Sponsor to the Taxpayers will constitute the transfer of an individual residential condominium unit and be taxed at the Individual Rate as provided in Code section 11-2102.a(9)(i).

* * *

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,

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Dara Jaffee
Acting General Counsel
Office of Legal Affairs

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