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Diana Beinart
General Counsel/Deputy Commissioner

April 17, 2019

RE: Request for Letter Ruling
Real Property Transfer Tax
FLR 19-4995

Dear XXXXXXXX:

This letter is in response to your request for a letter ruling dated December 27, 2018, regarding the applicable tax rate under the New York City Real Property Transfer Tax (“RPTT”) for the transaction described below. You submitted the following documents with your original request: (1) Contract of Sale; (2) Title Closing Invoice with copies of checks; (3) Real Property Transfer Tax Return; (4) Bargain and Sale Deed; and (5) Email correspondence with The New York City Department of Finance. Additional information was received on January 28, 2019 that included: (1) Copy of an email to the Taxpayer’s real estate broker dated May 1, 2018 stating Purchaser’s intention and desire to combine the units and an offer to purchase; (2) New York City Department of Buildings application for the combination of the two units and lot merger filed on behalf of the Purchaser; and (3) Copy of filed application for an amendment to the condominium declaration for use of one lot number for the combined units dated XXXX .

FACTS

The facts presented by the Taxpayer are as follows:

In 2012, the Taxpayer purchased condominium unit XXX in the building located at XXXXX, New York, New York.¹ In 2015, the Taxpayer purchased the adjacent smaller condominium unit, unit XXX.² Also in 2015, the Taxpayer acquired from the condominium association an exclusive license to the hallway between the two units and the right to reconfigure the hallway space in order to physically combine the units. After acquiring such exclusive license, the Taxpayer lived in and used the two units as a one family residence but did not take further action to reconfigure the hallway to physically combine the two units.

¹ Deed dated XXXXXXXX, recorded XXXXXX, CRFN XXXXXXXX.

² Deed dated XXXXXXXX, recorded XXXXXX, CRFN XXXXXXXX.

During May 2018, the Taxpayer and Purchaser were in talks for the sale of the two units and an offer was made for their purchase. The Purchaser indicated its intention to combine the units and a request was made at the time of the offer for any assistance that may be needed from the Taxpayer in obtaining, if possible prior to closing, the condominium board's approval for the combination of the units and for the removal of the kitchen and closets in the smaller unit.³ On May 24, 2018, the Taxpayer entered into a Contract of Sale for both units, including two storage units and the exclusive hallway license, with the closing occurring on July 24, 2018. Review of New York City Department of Building records shows that the Purchaser was granted work permits for interior renovations for the combination of the adjacent apartments, units XXX and XXX, at XXXXXX, the capping and removal of the existing gas range, sink and dishwasher in unit XXX, and for the merger of the tax lot numbers into one number.⁴

ISSUE

Whether the Taxpayer's sale of the above described two condominium units to the same purchaser should be treated as the sale of an individual residential condominium unit qualifying for the lower RPTT transfer tax rate, as provided in section 11-2102.a(9)(i) of the Administrative Code of the City of New York (the "Code")?

CONCLUSION

We have determined, under the facts and circumstances presented, the sale of the above-described condominium units should be treated as the sale of an individual residential condominium unit subject to the lower transfer tax rate under Code section 11-2102.a(9)(i).

DISCUSSION

Code section 11-2102 imposes the RPTT on the conveyance of real property or the transfer of an economic interest in real property located in New York City (the "City") where the consideration for such conveyance or transfer exceeds \$25,000. Code section 11-2102.a(9)(i) imposes a special lower tax rate for transfers of "one, two, or three-family houses, and individual residential condominium 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 or conveyances of real property that do not qualify for these special lower rates 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 \$500,000.⁵

The New York City Department of Finance (the "Department") applies the higher transfer tax rate to a transaction where a single grantor transfers more than one residential condominium unit to a single grantee, often referred to as a "bulk sale." In order to determine whether a bulk sale has taken place the Department will look to the facts and circumstances of the specific case.⁶ In the Matter of Gruber, TAT(E)03-7(RP); TAT(E)03-8(RP); TAT(E)03-9(RP), the petitioner purchased three units with the intention of combining them into a single residential unit and while the units were not combined prior to closing the petitioner prepared plans for the combination of the units and work

³ Email dated May 1, 2018 between Purchaser's broker and the Taxpayer's broker.

⁴ New York City Department of Buildings Job No. XXXXXXX, pre-filed 1XXXXXX, approved XXXXXX and Application for Filing an Amendment to a Condominium Declaration, filed XXXXX.

⁵ Code section 11-2102.a(9)(ii).

⁶ Finance Memorandum 00-6REV, dated September 8, 2011.

commenced after closing. The New York City Tax Tribunal reasoned that the petitioner had acquired certain rights that were consistent with using the floor as a single residence and that the conveyances were not for more than one residential condominium unit. Therefore, the lower RPTT rate applied.

In the present fact pattern, we also have a purchaser who acquired certain rights that were consistent with using multiple units as a single residence. The Purchaser obtained the exclusive hallway license that the Taxpayer had acquired in 2015 that gave not only exclusive use of the hallway between the two units but also the rights to reconfigure the hallway in order to physically combine the units. Prior to closing, the Purchaser's broker in an email to the Taxpayer's broker expressed the desire to combine the units and requested assistance in obtaining the condominium board's approval for some work to commence prior to closing. You have submitted copies of building permits and applications that show that work started shortly after the purchase to combine the units and merge the tax lot numbers. 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). Therefore, the lower RPTT rate of 1.425 percent applies to the consideration, which is shown to be over \$500,000.⁷

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

CCS:ccs

⁷ Contract of Sale dated May 24, 2018.