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Diana Beinart
General Counsel/Deputy Commissioner

July 21, 2022

XXXXXX XXXX
XXXXXX XXXX XXXXXX, X XXX
XXXXXXXXXX, XX XXXXXX

Re: Request for Letter Ruling
NYC Real Property Transfer Tax
FLR No.: 22-5020

Dear XXX XXXX:

This letter is in response to your request for a letter ruling dated April 15, 2022, regarding the application of the New York City Real Property Transfer Tax (“RPTT”) to the hypothetical transaction described below. Additional information was received on May 31, 2022.

FACTS

The hypothetical facts you have presented are as follows:

A Limited Liability Company (the “Sponsor”) owns a residential condominium building (the “Building”). The Sponsor is owned by four members (the “Members”) in the following proportion: Member A owns 40%, Member B owns 25%, Member C owns 25%, and Member D owns 10%.

The operating agreement of the Sponsor provides that efforts are to be made for several years to sell the residential units in the Building. After the allotted time had passed, any units unsold will be divided among the Members and transferred to them by deed. Common areas, such as parking garage, retail space, and storage will remain with the Sponsor.

The units will be divided in proportion to the Members' interest percentages in the Sponsor, based on the market value of the units. Common areas represent about 8% of the value of the unsold portion of the Building. The residential units represent the other 92% and are distributed in the following proportion: Member A will receive 40% of the unsold units (36.8 % of total unsold value), Member B will receive 25% (23% of total unsold value), Member C will receive 25% (23% of total unsold value), and Member D will receive 10% (9.2% of total unsold value).

ISSUE

Will RPTT be imposed on the transfers of unsold units from the Sponsor to the Members?

CONCLUSION

The conveyance of the units from the Sponsor to the Members will be a mere change of form of ownership and will be exempt from RPTT.

DISCUSSION

Under the New York City Administrative Code (the "Code") section 11-2102 the RPTT is imposed 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. Section 11-2106(b) of the Code exempts from tax certain transactions that would otherwise be subject to the RPTT. Under paragraph (8) of that subdivision, a deed conveying an interest in real property that effects a mere change of identity or form of ownership is exempt from the RPTT to the extent that the beneficial ownership of the property remains the same. Under Title 19 of the Rules of City of New York ("RCNY") section 23-05(b)(8)(iv), the determination of the beneficial ownership of real property before a transaction and the extent to which the beneficial interest remains the same following the transaction, will be based on the facts and circumstances.

Prior to the transfer, the Members jointly owned 100% of the unsold units and common areas of the Building. When individual units were sold to unrelated parties, the interest held by the Members in the Building was reduced, but they continued to own 100% of all unsold property in the same proportion as the interest held by them in the Sponsor. Once the sales activities ceased, the Members made the decision to distribute to themselves all the unsold units, but to keep the common areas in the Sponsor's possession.

The RPTT will not apply to a transfer if there is no change in beneficial ownership. Transfer from an entity to the owner of such entity is not considered a change in beneficial ownership. Therefore, transfers of units from the Sponsor will not be considered a change in beneficial ownership, to the extent that the Members receive a percentage of the distributed property equal to their interest in the Sponsor.

Taking into account only the total value of the property that is being transferred, Member A received 40%, Member B received 25%, Member C received 25%, and Member D received 10%. These percentage match exactly each Member's interest in the Sponsor, therefore the transfer was a mere change of ownership.

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

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