



Legal Affairs Division  
375 Pearl Street, 30<sup>th</sup> Floor  
New York, NY 10038  
Tel. 212.748.7215  
Fax 212-748-6982

Diana Beinart  
General Counsel/Deputy Commissioner

July 21, 2022

XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX  
XXXXXXXXXX

**Re:** Request for Letter Ruling  
NYC Real Property Transfer Tax  
FLR No.: 22-5022

Dear XXXXXXX:

This letter is in response to your request, received on June 24, 2022 on behalf of XXX, L.P. (the "Taxpayer"), for a ruling on the applicable Real Property Transfer Tax ("RPTT") rate schedule regarding the Taxpayer's sale to a purchaser of a residential condominium apartment unit ("Apartment Unit") along with two special restricted units known as "Studio Units."

**FACTS**

The Taxpayer, a Delaware limited partnership authorized to do business in New York, was the owner of a residential condominium unit XXX ("Apartment Unit") at XXX in Manhattan. The Apartment Unit is a XXX bedroom apartment of approximately XXX square feet. The Taxpayer was also the owner of two Studio Units XXX and XXX that are specially designated in the Condominium Residential By-Laws as special restricted units. The Studio Units are XXX and XXX square feet, respectively. Each Studio Unit includes a kitchen and a bathroom.

The Condominium's Residential By-laws (the "By-Laws") provide that, except for the sponsor of the condominium, only an owner of an Apartment Unit may own a Studio Unit. In addition, the occupancy of a Studio Unit must be for residential purposes and is restricted to: (1) the domestic employees of an Apartment Unit owner; (2) family members of an Apartment Unit owner which are

defined as a spouse, domestic partner, child, parent, or adult sibling; and (3) nonpaying guests of an Apartment Unit owner. The By-Laws further limit the occupancy of an Apartment Unit owner's nonpaying guest to three months. The occupancy of a nonpaying guest for more than three months is not permitted without the prior written consent of the Condominium's residential section Board of Managers (the "Residential Board"). In the event an Apartment Unit owner who also owns a Studio Unit rents the Apartment Unit, he or she must also rent the Studio Unit to either (a) the tenant of the Apartment Unit for a term consistent with the lease of the Apartment Unit or (b) another Apartment Unit owner for a term of one year, or if shorter, until such lessee ceases to be an Apartment Unit owner.

## **ISSUE**

Whether the Taxpayer's sale of an Apartment Unit along with two noncontiguous Studio Units should be treated as the sale of an individual condominium apartment so that the lower tax rate schedule for RPTT, as provided in section 11-2102(a)(9)(i) of the Administrative Code of the City of New York (the "Code"), applies?

## **CONCLUSION**

We have determined that, under the facts and circumstances presented, the sale of an Apartment Unit along with two noncontiguous Studio Units should be treated as the sale of an individual condominium apartment subject to the lower tax rate schedule for RPTT provided in Code section 11-2102(a)(9)(i).

## **DISCUSSION**

Section 11-2102 of the Code imposes the RPTT 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. Code section 11-2102(a)(9)(i) imposes a special lower rate on the "conveyances of one, two or three family houses, and individual residential condominium units...." The RPTT rate for these transfers is 1.0 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. Conveyances of real property that do not qualify for this special lower rate 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. Code § 11-2102(a)(9)(ii).

In *Matter of Rosenblum*, TAT(E)01-31 (RP) (9/12/2006), the New York City Tax Appeals Tribunal (the "Tribunal") addressed the question of the rate applicable to the transfer of a primary residential condominium unit and a "suite unit" located on a separate floor from the residential condominium unit under Code section 11-2102(a)(9)(i). The Tribunal determined that the transfer was a transfer of an individual residential condominium unit subject to the lower rate schedule under Code section 11-2102(a)(9)(i). In reaching its determination, the Tribunal in *Rosenblum* concluded that the suite unit was not a separate individual residential condominium but was an integral part of the primary residential condominium unit. The Tribunal relied on the fact that, except in the case of the condominium's sponsor, a suite unit could not be owned independently of a residential unit. The

Tribunal further noted the suite unit could only be used for residential purposes by the domestic employees, family members and nonpaying guests of a residential unit owner.

Here, based on the facts and circumstances presented, the situation appears to be substantially similar to that presented in *Rosenblum*. Under the By-Laws, a Studio Unit may not be owned independently from owning an Apartment Unit. In addition, the By-Laws provide the Studio Unit must be used for residential purposes and may only be occupied by the Apartment Unit owner's domestic employees, family members and nonpaying guests. The By-Laws further limit the occupancy of an Apartment Unit owner's nonpaying guest to three months. The occupancy of a nonpaying guest for more than three months is not permitted without the prior written consent of the Residential Board. In the event an Apartment Unit owner who also owns a Studio Unit rents the Apartment Unit, he or she must also rent the Studio Unit to either (a) the tenant of the Apartment Unit for a term consistent with the lease of the Apartment Unit or (b) another Apartment Unit owner for a term of one year, or if shorter, until such lessee ceases to be an Apartment Unit owner. Accordingly, the Apartment Unit owner's ownership and use of a Studio Unit is substantially restricted and clearly tied to his or her occupancy of the Apartment Unit. Hence, the ownership and occupancy of a Studio Unit would appear to be an integral part of the ownership and occupancy of an Apartment Unit.

Based on the above facts and representations with respect to the substantial restrictions on the ownership, use and occupancy of Studio Units, and the Tribunal's *Rosenblum* decision, it is our opinion that the sale of an Apartment Unit along with the two noncontiguous Studio Units, should be treated as the sale of an individual condominium apartment subject to the lower tax rate schedule for RPTT provided in Code section 11-2102(a)(9)(i).

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

CS:cs