NEW YORK CITY TAX APPEALS TRIBUNAL

In the Matter of 105-02 Forest Hills, LLC, et al. Petitioners	DECISION TAT (E) 20-18 (RP) TAT (E) 20-19 (RP)

The Commissioner of Finance of the City of New York (Respondent) filed an exception to a Determination of an Administrative Law Judge (ALJ) dated September 17, 2024 (ALJ Determination), which cancelled Notices of Determination issued by the New York City Department of Finance (Department), dated April 13, 2020 (Notices), asserting New York City Real Property Transfer Tax (RPTT) against Petitioners 105-02 Forest Hills LLC (Grantee) and Don Rick Associates LLC (Grantor) with respect to a conveyance of real property from the Grantor to the Grantee on May 2, 2017.[1] Petitioners filed a cross exception, which proposed certain revisions to the ALJ's findings of fact, including the amount of the percentage interest in Grantee received by a new member (SPG/Slate) admitted to Grantee in connection with the conveyance.[2]

Respondent was represented by Stephanie Fitos, Esq., Senior Counsel, New York City Law Department. Petitioners were represented by Elliot Pisem, Esq., of Roberts &

[1] As described below, the Property, located at 105-02 Queens Boulevard, Forest Hills, NY, was conveyed to 105-02 Forest Hills LLC for the purpose of developing it.

[2] Except as otherwise noted, the ALJ's Findings of Fact, although paraphrased and amplified herein, generally are adopted for purposes of this Decision. Certain Findings of Fact not necessary to this Decision have not been restated and can be found in the ALJ Determination.

Holland LLP. The parties submitted a Stipulation of Facts, in which the parties stipulated to certain facts and to the authenticity of certain exhibits, pursuant to New York City Tax Appeals Tribunal Rules of Practice and Procedure 20 RCNY §1-109. A hearing was held at which testimony was taken, and additional exhibits were admitted into evidence.

Grantor Don Rick Associates LLC had two sole members, Grofam, LP (Grofam) and Grobman Sibling, LLC (GS), each owning a 50% interest in Grantor. For a period of at least 19 years, Grantor owned real property (Property) located at 105-02 Queens Boulevard, Forest Hills, NY. We amend the ALJ's Findings of Fact #3 to more accurately reflect that, as of April 24, 2017, Grofam and GS have been continuously the sole members of GG Forest Hills LLC (GG), each owning a 50% interest in GG.[3]

Grantee 105-02 Forest Hills LLC was formed on or around April 12, 2017, the date of its original operating agreement, in which GG was the sole member owning 100% of the interests in Grantee.[4] On May 2, 2017, the Property was conveyed by deed from Grantor to Grantee (Conveyance). Immediately prior to the Conveyance, GG owned 100% of the interests in Grantee. Therefore, immediately following the Conveyance, Grofam and GS each owned 50% of the interests in both the Grantor and the Grantee.

On or about May 3, 2017, Grantor and Grantee recorded the deed with respect to the Property and jointly filed a RPTT return reporting the conveyance on which they

---

[3] See Stipulation of Facts (Stip.), Exh. B, last unnumbered page.

[4] We amend the ALJ's Findings of Fact to further reflect that the Grantee's Articles of Organization were filed with the New York Department of State on March 21, 2017. Stip. Exh. C, ¶1.

claimed the conveyance was wholly exempt from RPTT as a "mere change of identity or form of ownership."

At the time of the Conveyance, on May 2, 2017, the parties anticipated that SPG Forest Hills LLC (SPG) would be admitted to Grantee as a member.[5] On June 28, 2017, SPG was admitted to Grantee as a member pursuant to an Amended and Restated Operating Agreement between GG and SPG (Operating Agreement), the sole members of Grantee, in which SPG received a 40% "Percentage Interest" in Grantee and GG continued to hold the remaining 60% Percentage Interest. (Stip., Exh. E).[6] Although in subsequent amendments to the Operating Agreement, SPG divided its Percentage Interest with SPG Forest Hills Opportunity Fund LLC, we find that both are treated, for all relevant purposes under the Operating Agreement, as SPG with respect to their Percentage Interests.[7]

We amend the ALJ's Findings of Fact to include, where relevant, the testimony of David Schwartz.

---

[5] ALJ's Findings of Fact # 7; Stipulation of Facts #9.

[6] In the Operating Agreement between SPG and GG, dated June 28, 2017, SPG is referred to as "Slate." The Operating Agreement was further amended, on September 26, 2018, to state that any reference to Slate refers to SPG. See n. 7, *infra*. This change, substituting SPG for Slate in the Operating Agreement, is consistent with the Stipulation of Facts.

[7] On September 26, 2018, SPG transferred to SPG Forest Hills Opportunity Fund LLC (SPG II) a portion of its 40% interest in Grantee. (SPG II is referred to as Slate Newco in the Operating Agreement. Stip., Exh. F.). We amend the ALJ's Findings of Fact (Nos. 12 & 13) to reflect that SPG and SPG II are, for all relevant purposes, treated as SPG under the Operating Agreement (SPG and Slate are the same entity under the Operating Agreement), acting jointly with respect to their collective 40% Percentage Interest in Grantee; SPG was solely designated Manager of Grantee under the Operating Agreement. Stip., Exh. F, Sections 5.3(a) and (b).

David Schwartz, a principal and co-founder of SPG/Slate,[8] and co-responsible for investment decisions, development, construction, financial analysis and investments,[9] testified that he was familiar with the project to develop the Property, that he was involved in the project since the beginning,[10] that the "deal took months to complete,"[11] and that the project "probably" began in 2016.[12] Mr. Schwartz also testified that he was "involved in every aspect of that project."[13]

Mr. Schwartz testified that the purpose of conveying the Property to Grantee was to develop it into "retail, parking, and multifamily apartment building." (Tr., at 22). He further testified that the Grantor/owner (GG)[14] contributed the Property, valued at $29 million, to a new LLC joint venture with SPG to be managed by SPG. (Tr., at 22). GG's capital account was credited in the amount of $29 million. (*Id.*) We find that the owner of the Property was interested in pursuing a joint venture with SPG to develop the Property as far back as 2016, as "the deal took months to complete" and SPG/Slate began doing its due diligence and planning in connection with the deal to develop the Property at least as far back as 2016.[15] We further find, based on Mr. Schwartz' testimony, that the sole purpose of conveying the Property to Grantee on May 2, 2017 was to form a joint venture with SPG to develop the Property, even though SPG was not yet formally

---

[8] Tr., at 17.
[9] Tr., at 18.
[10] Tr., at 20.
[11] Tr., at 40.
[12] *Id.*
[13] Tr., at 20.
[14] The Members "acknowledge" that GG contributed the Property to Grantee. Operating Agreement, Sections 4.2 & 6.1(a).
[15] Tr., at 38-40.

admitted to Grantee as Managing member, which occurred on June 28, 2017. This finding is supported by Grantee's original operating agreement, dated April 12, 2017, in which Grantee's stated purpose was to undertake development, construction, financing and leasing of the Property, before the Property had been conveyed to Grantee on May 2, 2017. (Stip., Exh. C, Section 4). We find that, at least since 2016, Grantor had been in discussions with SPG to manage the development, construction, financing and leasing of the Property. We find that when Grantor formed Grantee on April 12, 2017, with the stated purpose of developing the Property, Grantor intended that SPG would manage the development project for the Property.

SPG's responsibilities entailed the management, development, construction and leasing of the Property, as well as to fund the development project and see it through to completion. (Tr., at 21-22); Stip., Exh. E, Article 14 & Sections 9.1(b) & 6.2(c)).

SPG (and SPG II)[16], as members of Grantee, were required to provide certain guarantees (Construction Lender Guarantees) as provided in Article 14 of the Operating Agreement (Stip., Exh. E). We amend the ALJ's Finding of Fact # 15 to expand on SPG's substantial obligations under the Construction Lender Guarantees. SPG was required to either provide the Construction Lender Guarantees itself, or to cause an affiliate of SPG to act as Guarantor. (Stip., Exh. E, Section 14.2(b)).

[16] As explained, *supra* n. 7, any reference to SPG as Member also includes SPG II, both acting jointly with respect to their LLC interests. SPG, alone, was the Manager of Grantee.

Perhaps the most significant of SPG's guarantees, both, in terms of its dollar amount and in its importance to assuring completion of the construction and development of the Property, is the "Guarantee of Completion" or "Project Construction Guaranty". Stip., Exh. E, Section 14.2(b) and (c) and Schedule C to Exh. E. Under the Guarantee of Completion, the Guarantor, an affiliate of SPG/Slate, guaranteed GG that the construction of the project will be completed in accordance with the Operating Agreement, and that guarantee is absolute and is strictly enforced. The estimated construction costs for the project were $68 million, which were anticipated to be financed through the Construction Loan and capital contributions. (Tr. 23).

SPG was responsible for funding all the costs and expenses of the Development Budget. Exh. E, Section 14.1 (a). SPG was also responsible for obtaining and closing the Construction Loan. Section 14.2 (a).

SPG has made total capital contributions to Grantee through the end of 2021 of $5,000,000. If, at any time up to the date of Substantial Completion, as defined on page 10 of Exh. E, the Construction Loan proves to be insufficient to pay the costs and expenses in the Development Budget, SPG is required to pay the difference as an additional capital contribution to Grantee. Exh. E, Section 6.2(c).

As per Section 5.3 of the Operating Agreement, SPG received a 40% Percentage Interest in Grantee and GG held the remaining 60% Percentage Interest.[17] We further

[17] Petitioners introduced into evidence projection sheets showing projected cash flows, periodically updated based on changes in market conditions such as interest rates. Tr., at 27. Mr. Schwartz testified that Slate's interest in the partnership was not based on those projections. Tr., at 28. He testified that the projections

find that, based on Mr. Schwartz' testimony, SPG's 40% Percentage Interest in Grantee was its ownership interest in that entity, and that interest "doesn't change based on market conditions." Supra, n. 17.

Grantee's partnership federal income tax returns, Form 1065, for each of the years 2017, 2018, and 2019 reported that SPG's 40% Percentage Interest[18] in Grantee was a 40% interest in Grantee's profits, losses, and capital. Exhs. G, H, & I.

No distributions, in any ratio, have ever been made by Grantee.

On April 13, 2020, the Department issued the Notices asserting RPTT due of $82,897.50, plus penalty and interest of $24,711.52, totaling $107,609.02. (Exh. J). The Notices contained the following explanation (on page 2):

> "The exemption asserted for a mere change is being adjusted to the extent that the beneficial interest of the real property or economic interest therein has not remained the same per Code Section11-2106(b)(8)."
>
> "Based on information submitted there was a 40% change in beneficial ownership."

We modify the ALJ's Finding of Fact #23 which states, in relevant part, that "The Notices each assert a RPTT liability in connection with the Deed Transfer [the conveyance of the deed from Grantor to Grantee]," to reflect that the Notices treated the

---

reflect Slate's investment in the partnership. Tr., at 30. On cross examination by Ms. Fitos, Mr. Schwartz acknowledged that, while projected cash flows available for distribution, as shown on the projection sheets introduced into evidence by Mr. Pisem, changed with changes in market conditions, "our interest [in Grantee] did not change." Tr., at 53 – 54. Mr. Schwartz then clarified: "So our percentage ownership in that entity doesn't change based on market conditions." Tr., at 55.

[18] Inclusive of SPG II's Percentage Interest. *Supra*, n. 6 & 7.

conveyance of the Property by GG to Grantee and the grant of a 40% ownership interest in Grantee to SPG as a single transaction, i.e., with the understanding that the Property was conveyed by GG to Grantee for the purpose of developing it in a joint venture with SPG.

We find that the Notices asserted RPTT liability on the transaction, in its entirety, to form the joint venture, not on the conveyance of the deed viewed in isolation.

Respondent argued before the ALJ that the 100% "mere change" exemption claimed by Petitioners on filing their RPTT return with respect to the conveyance of the deed to Grantee was incorrect. Relying on our Decision in *GKK 2 Herald LLC*, TAT (E) 13-25 (RP) (NYC Tax Appeals Tribunal 2016), *affd,* 63 NYS 3d 20 (1st Dept 2017), Respondent argued that the step transaction doctrine applied to treat the conveyance of the deed by GG to Grantee, followed by the transfer of a 40% ownership interest in the Grantee to SPG, as a single transaction, resulting in a 40% change in the beneficial ownership of the Property. The 100% "mere change" exemption claimed by Petitioners on their RPTT return, therefore, was reduced by the 40% change in beneficial ownership, the Interest Transfer to SPG, with 60% beneficial ownership retained by GG, the Grantor. Thus, 60% of the Property transferred to Grantee was exempt from RPTT and 40% was taxable.

The ALJ Determination granted the Petitions and cancelled the Notices. The ALJ "concluded that it was appropriate for Respondent to apply the step transaction doctrine

to the Deed Transfer and to the Interest Transfer."[19] The ALJ concluded that the Deed Transfer would not have taken place without the Interest Transfer, reasoning that "[t]he facts and circumstances in this case therefore justify the inference that the expansion of the joint venture was the intended ultimate result of both the Deed Transfer and the Interest Transfer."[20]

However, the ALJ disagreed with Respondent as to the result of applying the step transaction doctrine. "Respondent asserts that the transactions should be collapsed, resulting in RPTT owed to the extent of change in beneficial ownership."[21] The ALJ, without specific reference to Respondent's briefs, then described what he believed to be Respondent's characterization of the "substance" of the transaction: "Essentially, Respondent argues that the transactions should be recharacterized as if the transfer of the deed was made directly to SPG. However, no such direct deed transfer to SPG occurred either in substance or form."[22] By describing Respondent's application of the step transaction doctrine as resulting in the direct transfer of the deed to SPG, the ALJ misdescribed Respondent's characterization of the transaction as a direct sale of the entire Property to SPG, not as the transfer of a 40% beneficial interest in the Property to SPG to form a joint venture with GG. Under the ALJ's mischaracterization of Respondent's position, GG would have transferred its entire beneficial interest in the Property to SPG and could not have formed a joint venture with SPG as GG would have retained no

---

[19] ALJ Determination, at 11.
[20] *Id.*
[21] ALJ Determination, at 12.
[22] *Id.*

interest in the Property to jointly develop it. By treating the transaction as if GG had parted with its entire interest in the Property, the ALJ looked to case law describing the conditions of a sale, particularly our decision in GKK2, *supra*, which the ALJ would not have otherwise reached in determining the case.

We do not find the ALJ's characterization to be an accurate statement of Respondent's position. Respondent argues that applying the step transaction doctrine to the Deed Transfer and the Interest Transfer results in the imposition of RPTT on a 40% change in beneficial ownership in the Property. That would be impossible in a transfer/ conveyance of the Property directly to SPG, in which SPG would receive 100% beneficial interest in the Property, resulting in a 100% fully taxable change in beneficial ownership of the Property, rather than the 40% beneficial ownership change argued by Respondent.

The ALJ, however, ultimately concluded that SPG received only a 40% minority interest in the Property: "The substance of the collapsed transaction is the expansion of a joint venture through *the transfer of a minority economic interest*." (Emphasis added.)[23] The ALJ, nevertheless, concluded that: "Even if Respondent's assertion that 40 percent of the membership interest in Grantee was transferred as part of the Interest Transfer is correct, the transfer still qualifies as a *transfer of a non-controlling (i.e., less than 50 percent) economic interest*." (Emphasis added.)[24] The ALJ, thus, limited his inquiry to

[23] ALJ Determination, at 14.
[24] *Id.*

the issue of whether the Interest Transfer, itself, was subject to RPTT, rather than to the effect of that Interest Transfer on the change in beneficial ownership for purposes of the "mere change" exemption.

As described below, we believe that the ALJ's mischaracterization of Respondent's position affected the ALJ's statement of the issue to be decided and the result in this case.

Respondent argues that the ALJ, having correctly determined that the step transaction doctrine applies here to treat the Deed Transfer and the Interest Transfer as a single transaction, erroneously applied the step transaction doctrine to the facts of this case. Respondent argues that "the ALJ misstates Respondent's position on the application of the step transaction doctrine" and that Respondent never argued that "the transactions should be recharacterized as if the transfer of the deed was made directly to SPG."[25]

Respondent asserts it had argued before the ALJ that, "when viewed as an integrated whole," the conveyance of the Property by deed from Grantor to Grantee, together with the admission of SPG to Grantee as a 40 percent member to form a joint venture, resulted in a 60 percent "mere change in form" exemption from the RPTT and a 40 percent taxable change in beneficial ownership of the Property.[26] Respondent further argues that, when the two transfers are collapsed, the Deed Transfer and the (40 percent)

---

[25] Resp. Br., at 9.
[26] Resp. Br, at 2.

Interest Transfer should be viewed as if they had occurred simultaneously. Thus, "Grantee's transitory ownership of the Property before SPG acquired a 40% interest in Grantee should be disregarded because its sole purpose was to avoid RPTT."[27] It is Respondent's position that the transfer of the Property to Grantee and the transfer of a 40% interest in the Property to SPG are to be considered as one and cannot be separated from one another. Therefore, the issue is not, as the ALJ stated, whether there was a separate transfer of a noncontrolling (less than 50%) economic interest to SPG that could not be taxed separately under the RPTT, but whether the single, simultaneous, transfer of the Property to Grantee and 40% interest to SPG resulted in a taxable 40% change in the beneficial ownership of the Property for the purpose of applying the "mere change" exemption.

Along those same lines, Respondent argues that the ALJ misreads our decision in *GKK 2*, *supra*, to limit the applicability of the step transaction doctrine under the RPTT only to circumstances where the substance of the transaction, viewed in its entirety, is a sale of the Property by a grantor in which the grantor is "cashed out" or is relieved of a liability.[28] Respondent argues that under *GKK 2* "the critical factual question to be analyzed is 'whether, and to what extent, a grantor retains a beneficial interest in real property' after the transfers are collapsed."[29] Respondent argues that here, as in *GKK 2*, the step transaction doctrine must be applied to determine whether Grantor retained any

---

[27] Resp. Br., at 9.
[28] Resp. Br., at 10-12.
[29] *Id.*, at 11. (Citing GKK, at 9.)

beneficial ownership of the Property that would entitle it to claim the "mere change" exemption to the extent it retained beneficial ownership. Respondent points out that in *GKK 2* the Tribunal answered that question in the negative after applying the step transaction doctrine, concluding that the substance of the transaction was a sale and the grantor retained no beneficial ownership in the Property to entitle it to claim the "mere change" exemption.[30] Respondent argues that the same rationale for applying the step transaction doctrine to *GKK* 2 is equally applicable to the present case to determine whether the Grantor retained beneficial ownership in the Property entitling it to the "mere change" exemption. Respondent asserts that the step transaction doctrine, therefore, applies under the RPTT where the series of transactions result in "the expansion of a joint venture through the transfer of a minority economic interest where Grantor continues to hold a majority ownership interest in the Property."[31]

Petitioners agree with the ALJ's application of the step transaction doctrine to the transfers at issue here, and with the ALJ's conclusion that "the substance of the transaction was the 'expansion of a joint venture through the transfer of a minority economic interest."[32] Petitioners, however, argue that the transfers which created the joint venture in which SPG received a minority interest were not taxable under the RPTT.[33]

---

[30] *Id.*
[31] *Id.*
[32] Pet. Reply Br., at 2.
[33] *Id.*

Petitioners in essence argue that the transfers to create the joint venture, i.e., the conveyance of the Property to Grantee together with the transfer of a 40% minority interest to SPG, were not taxable, arguing that it was not necessary to transfer the Property to the Grantee to create the joint venture. Petitioners reason that, without the conveyance of the Property to Grantee, all that remains is the transfer of a noncontrolling 40% economic interest which is exempt. Putting aside, for the moment, the legal implications of our abandoning the actual transaction before us and transforming that transaction into something entirely different to answer the legal question before us, Petitioner argues that admitting SPG as a partner in Grantor Don Rick Associates LLC is the same, for all practical purposes, as the Grantor having transferred the Property to Grantee to form a joint venture with SPG. We feel compelled to remark at this juncture, however, that both transactional structures are not in any relevant respect equivalent. The practical effect of Grantor Don Rick Associates LLC retaining the Property and admitting SPG as a partner, instead of transferring the Property to Grantee to form the joint venture, would be to give SPG a share in every other venture that Don Rick Associates LLC engages in with respect to any other properties it owns; properties and ventures in which SPG would have no involvement and to which it would contribute no services or capital. SPG's partnership interest in Don Rick cannot in any sense be equivalent to the minority partnership interest SPG receives in the Grantee, in which SPG conducts Grantee's only business - the joint venture. We must assume that the Grantor had a legitimate business reason to transfer the Property to Grantee to organize its joint venture with SPG in an entity that was separate from Grantor's other business.

Petitioners also argue that SPG's percentage interest in Grantee was not the 40% stated in Grantee's partnership federal income tax returns filed for each year, and stated in its Operating Agreement, but that SPG's interest in Grantee was substantially lower.[34] Petitioner does not specify SPG's interest as a definite percentage but as a "maximum interest" that was "no more than 14.706%."[35]

For the following reasons we reverse, in part, the ALJ Determination, deny the Petitions and reinstate the Notices.

Administrative Code §11-2102.a imposes the RPTT on "each deed at the time of delivery by a grantor to a grantee" where the consideration exceeds $25,000. Administrative Code §11-2102.b(1) also imposes the RPTT on "each instrument or transaction . . . whereby any economic interest in real property is transferred by a grantor to a grantee" where the consideration exceeds $25,000. For purposes of the RPTT, a "Deed" is defined as "[a]ny document or writing . . . whereby any real property or interest therein is created, vested, granted, bargained, sold, transferred, assigned or otherwise conveyed . . . ." Administrative Code §11-2101.2. An "economic interest in real property" includes an interest in "a partnership . . . or other unincorporated entity which owns real property" in the City. Administrative Code §11-2101.6. "Controlling interest" includes 50% "or more of the capital, profits or beneficial interest in a "partnership, association, trust or other entity." Administrative Code §11-2102.8.

---

[34] Pet. Reply Br., at 4-6.
[35] Pet. Reply Br., at 5.

Finally, "transfer" is defined in connection with an economic interest in real property as including the "transfer or transfers . . . of . . . interest or interests in a partnership . . . whether made by one or several persons, or in one or several related transactions, which ... interest or interests constitute a controlling interest in such . . . partnership . . ." Administrative Code §2101.7.

Thus, the RPTT applies to a deed of *any* interest in real property in the City, but it applies to a transfer of an economic interest in an entity that owns real property in the City *only* if the economic interest represents a controlling (i.e., 50% or more) interest in the entity.

Administrative Code §11-2106.b lists the "deeds, instruments or transactions" which, when conveyed or transferred, are exempt from RPTT including, at paragraph b(8):

> "A deed instrument or transaction conveying or transferring real property or an economic interest therein that affects a mere change of identity or form of ownership or organization to the extent the beneficial ownership of such real property or economic interest therein remains the same. . . ."

The exemption provided by Administrative Code §11-2106.b(8) is commonly referred to as the "mere change exemption." The Real Property Transfer Tax Rules of the City of New York (RPTT Rules) provide at 19 RCNY §23-05(b)(8)(iv) that:

> "[f]or purposes of determining whether and to what extent the mere change of identity or form of ownership or organization exemption applies, the determination of the beneficial ownership of the real property or economic interest therein prior to a transaction and the extent to which the beneficial interest therein remains the same following the transaction

will be based on the facts and circumstances."

Applying the above RPTT provisions, Grantor conveyed by deed its entire beneficial interest in the Property to Grantee on May 2, 2017. As the value of the Property conveyed by deed to Grantee far exceeded $25,000,[36] the conveyance was taxable under Administrative Code §11-2102.a. The remaining issue is the proper application of the "mere change exemption" under Administrative Code §11-2106.b(8) to the conveyance of the Property from Grantor to Grantee.

Respondent argues here, as before the ALJ,[37] that the step transaction doctrine must be applied to treat the Deed Transfer and the Interest Transfer "as an integrated whole" such that the conveyance of the Property to Grantee and the admission of SPG as a 40% member of Grantee, must be treated as having occurred simultaneously, reducing the amount of the "mere change exemption" from 100% to 60% to reflect the admission of SPG to Grantee as a 40% member. We agree with Respondent.

It is undisputed that Grantor conveyed the Property to Grantee. That conveyance was the taxable event under Administrative Code §11-2102.a, and the entire value of the Property would be taxable pursuant to that section but for the "mere change exemption" in Administrative Code §11-2106.b(8).

---

[36] See *supra*. David Schwartz testified that the Property was valued at $29 million and Grantor received a capital account in that amount. Tr., at 22.

[37] Respondent's Brief before the ALJ, at 1-2 and 6-10.

The "mere change exemption" pursuant to §11-2106.b(8) applies only "to the extent the beneficial ownership of such real property or economic interest therein remains the same." After SPG's receipt of a 40% interest in Grantee (an "economic interest" in the Property owned by that entity, see §11-2101.6) Grantor's economic interest in the Property was reduced in the same amount, to 60% and, to that extent, did not "remain the same" for purposes of the "mere change exemption". Therefore, only 60% of Grantor's interest in the Property conveyed to Grantee "remained the same" and was exempt, and the conveyance of the Property was taxable to the extent of the 40% interest received by SPG.

The ALJ, however, while concluding that the step transaction doctrine applies here to reflect SPG's 40% interest in Grantee, nevertheless, reached an erroneous conclusion in his application of the step transaction doctrine to the facts of this case. We conclude that the following errors in the ALJ's analysis resulted in the ALJ reaching the erroneous conclusion that the transaction, when collapsed, was wholly exempt. [38]

---

[38] Petitioners do not dispute that the step transaction doctrine applies here, and the applicability of that doctrine here is not an issue before us.

Petitioners agree with "[t]he well-reasoned Determination of the Administrative Law Judge . . .," and the ALJ's conclusion that "the substance of the transaction was 'the expansion of a joint venture through the transfer of a minority economic interest.'" Pet. Reply Br., at 1, 2. Petitioner further elaborates on this point: "As recognized by the ALJ Determination, admitting SPG as a minority partner in the venture that owned the property was always Petitioners' goal." Pet. Reply Br., at 4.

[38] Petitioner's Brief before the ALJ, at 1-2 and 6-10.

The ALJ misapplied the step transaction doctrine and mischaracterized Respondent's position on the result of applying the step transaction doctrine here. Citing to Respondent's brief, the ALJ erroneously concludes that:[39]

> "Essentially, Respondent argues that the transactions should be recharacterized as if the transfer of the deed was made directly to SPG. However, no such direct deed transfer to SPG occurred either in substance or form. The step transaction doctrine 'cannot generate events which never took place just so an additional tax liability might be asserted'. [Citation omitted.]"

Respondent, however, made no such argument. Nowhere does Respondent suggest that "the transactions should be characterized as if the transfer of the deed was made directly to SPG."[40] It would have been impossible, under the stipulated facts and documents, for Grantor to have transferred a 100% interest in the Property by deed directly to SPG, completely bypassing Grantee, leaving both Grantor and Grantee with a zero percent interest in the Property. Under the ALJ's characterization of Respondent's position, Grantor would not have entered into a joint venture with SPG to develop the Property, as the ALJ found, but would have transferred to SPG its entire interest in the Property, not the 40% interest contemplated by the parties as set forth in the stipulated documents defining the partnership arrangement between Grantor and SPG to develop the Property.[41] The ALJ's characterization of Respondent's position is, thus, internally

---

[39] ALJ Determination, at 12.

[40] *Id.*

[41] See Section 5.3, Amended and Restated Operating Agreement of 105-02 Forest Hills LLC, pursuant to which Grantor (GG) received a 60% Percentage Interest in Grantee and Slate (SPG) received a 40% Percentage Interest in Grantee.

contradictory, diametrically opposed to the stipulated facts, and is not a rational interpretation of Respondent's position.

We adopt Respondent's stated position that:[42]

> "Rather, it is as if Grantor deeded a 60% interest in the Property to Grantee that qualifies for the mere change exemption, and a 40% interest that does not qualify for the exemption by virtue of SPG's membership." Grantee's transitory ownership of the Property before SPG acquired a 40% interest in Grantee should be disregarded because its sole purpose was to avoid RPTT."

Respondent's position accords with the underlying business deal between Grantor and SPG, the stated purpose of which was to develop Property contributed by Grantor through the efforts of, and specified business risks assumed by, SPG. By contrast, the ALJ's interpretation does not accord with the underlying business deal and is at odds with the facts.

The ALJ's mischaracterization of the transaction resulted in his misapplying our decision in *GKK 2*. In *GKK 2*, we concluded that the step transaction doctrine, applicable under the income tax, can be applied under the RPTT and, when properly applicable, that doctrine can be used to collapse the various interdependent steps of a transaction to determine its economic substance. In *GKK 2*, we concluded that, upon collapsing the various steps in the transaction, its economic substance was a taxable sale of the property for cash and the relief of liabilities.[43] Concluding that the transaction was, in economic substance, a sale to the grantee of the grantor's entire interest in the property, we reached

---

[42] Resp. Brief, at 10.
[43] *GKK 2*, at 11-13, and 16.

the opposite conclusion we reach here, that the "mere change" exemption did not apply to the sale of the Property because the grantor retained no beneficial interest in the property.[44]

The ALJ's mischaracterization of Respondent's position that the transaction, in substance, was a direct sale to SPG, also appears to have misled the ALJ to erroneously conclude that our decision in *GKK2* concerning the applicability of the "mere change exemption" does not apply here. The ALJ distinguished GKK2 on the grounds that, here, the Grantor did not receive cash nor was relieved of any liabilities and the transaction was not a sale of the Property, as in GKK2, but the nontaxable transfer of a noncontrolling minority economic interest in Grantee to SPG.[45] Based on this analysis, the ALJ concluded that *GKK 2* does not apply to determine whether the "mere change exemption" applies to the formation of the joint venture here. Implicit in the ALJ's analysis are two erroneous conclusions. First, that *GKK 2* does not apply here because it applies only to a sale of the Property, not to the creation of a joint venture. GKK2, however, considered whether the "mere change exemption" applied there and concluded that it didn't, reasoning that the transaction was a sale in which the seller retained no beneficial interest in the property to be eligible for the exemption. We reach the opposite conclusion here, that the "mere change exemption" applies on the grounds that the Grantor retained a 60% beneficial interest in the Property. We, therefore, reject the ALJ's

---

[44] *GKK 2*, at 13.
[45] ALJ Determination, at 13.

erroneous conclusion that our decision in GKK2 prevents us from applying the "mere change exemption" to the formation of the joint venture in this case.

We also address the ALJ's conclusion that "even if Respondent's assertion that 40% of the membership interest in Grantee as part of the Interest Transfer is correct, the transfer still qualifies as a transfer of a non-controlling economic interest."[46] The ALJ's conclusion is based on the erroneous assumption that to tax the transaction to the extent of SPG's 40% interest in Grantee, there must be a separate taxable "transfer" of that interest.

However, as explained, *supra*, Grantor's conveyance of the deed to Grantee provided the requisite taxable transfer of the Property to trigger the RPTT on the Property. Administrative Code §11-2102.a. That transfer was, however, exempt as a mere change in form of ownership, under Administrative Code §11-2106.b(8), to the extent that Grantor retained an interest in the Property. When the transfers are collapsed under the step transaction doctrine, Grantor retained a 60% majority economic interest in the Property and SPG received a 40% minority economic interest in the Property. As a result, 40% of the transaction was taxable under the RPTT, not because a separate 40% transfer occurred, but because the exemption applied only to Grantor's 60% retained interest in the Property, not to SPG's 40% interest in the Property, which was taxable.

---

[46] ALJ Determination, at 14.

Finally, and briefly, we address Petitioner's contention that SPG's interest in Grantee was much smaller than the 40% Percentage Interest stated in the Grantee's Operating Agreement and in all the partnership tax returns it filed, based on certain projections submitted into evidence indicating that the market value of SPG's interest declined. As we explained, *supra*, we reject Petitioner's contention that SPG's Percentage Interest in Grantee is not the percentage stated in all the relevant documents, but that SPG's percentage interest in Grantee can rise and fall based on changing market conditions. Our conclusion is based on the testimony of Petitioner's own witness, Mr. Schwartz, who testified that Petitioner's interest in Grantee is 40% and that interest does not change with market conditions.[47]

While we agree with the ALJ's conclusion that the step transaction doctrine applies here, for the above reasons we disagree with his conclusion that the transactions creating the joint venture between Grantor and SPG are not taxable under the RPTT.

---

[47] See, *supra*, n. 17.

We, therefore, reverse in part the ALJ determination, deny the Petitions and sustain the Notices.[48]

Dated: September 3, 2025
New York, NY

/s/
Neil Schaier
President and Commissioner

/s/
Robert J. Firestone
Commissioner

/s/
Vlad Frants
Commissioner

[48] We have considered all the other arguments of the Parties and find them unpersuasive.