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Re: Request for Ruling
Real Property Transfer Tax
FLR 14-4965-RPTT

Dear :

This letter is in response to your request, received on December 29, 2014, on behalf of (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 one or more special restricted units known as "Studio Units." Additional information was received on or about March 11 and May 13, 2015.

FACTS

The Taxpayer, a Delaware LLC authorized to do business in New York, is the sponsor of a condominium project (the "Condominium") located in Manhattan. The Taxpayer has presented an offering plan (the "Plan") which includes the sale of 144 units for residential purposes. The Plan currently designates 105 of these units as Apartment Units and 39 of these units as Studio Units. The 39 currently designated Studio Units are located on certain floors of the condominium tower.

The Condominium's Residential By-laws (the "By-Laws") provide that, except for the Taxpayer, 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 3 months. The occupancy of a nonpaying guest for more than 3 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. You, through your associate, have represented that the By-Laws will be amended to provide that in the event an Apartment Unit owner who owns any Studio Unit sells or otherwise conveys his or her Apartment Unit, that Apartment Unit owner must also convey his or her Studio Unit to either the purchaser of the Apartment Unit or to another Apartment Unit owner.

ISSUE

Whether the Taxpayer condominium sponsor's sale of an Apartment Unit along with one or more 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 one or more 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 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 3 months. The occupancy of a nonpaying guest for more than 3 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. Finally, the Taxpayer, through its representative, has represented that the By-Laws will be amended to provide that in the event an Apartment Unit owner who owns any Studio Unit sells or otherwise conveys his or her Apartment Unit, that Apartment Unit owner must also convey his or her Studio Unit to either the purchaser of the Apartment Unit or to another 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 one or more 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

JM:jm