

March 6, 2006

Re: Ruling Request
Real Property Transfer Tax

FLR 064845-021

Dear _____ :

This letter is in response to your request dated February 2, 2006 for a ruling on behalf of the _____ Limited Partnership (the "Taxpayer") as to the tax rate applicable for purposes of the New York City Real Property Transfer Tax ("RPTT") with respect to the conveyance of _____ (the "Property").

FACTS

Taxpayer is the owner of record of the Property. The Property consists of one building, seven stories high with a cellar. The seven stories of the building contain two residential units. A medical office is located in the cellar. You have represented that since 1997 and before, pursuant to written leases between the Taxpayer and the tenants, the cellar of the Property has been used as a medical office by a physician while the two residential units, when occupied, were rented and used exclusively as primary residences by the tenants. One of the two residential units, consisting of Floors 1 through 5 of the Property has been unoccupied since the last tenant's lease expired on September 30, 2005. The medical office, constituting less than ten percent (10%) of the approximate gross square footage of the building has been and continues to be used solely as a doctor's office.

The Property is presently categorized as Tax Class 1 and Building Code S2 (primarily 2 family with one store or office) on the City's Tentative Assessment Roll 2006-2007. The current Certificate of Occupancy dated December 10, 1998 classifies the Premises as residential and lists a medical office in the cellar. The Taxpayer has entered into a contract to sell the Property at a sales price in excess of \$500,000.

ISSUE

You have requested a ruling as to whether the Seller's conveyance of the Property is subject to the rate of 1.425 percent applicable to the conveyance of a one, two or three family house where the consideration is more than \$500,000.

CONCLUSION

Based on the facts presented and the documents submitted, we have determined that the tax rate applicable to the conveyance of the Property is 1.425 percent.

DISCUSSION

Section 11-2102 of the Administrative Code of the City of New York (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. For a conveyance of a one, two or three-family house or an individual residential condominium unit, the RPTT is imposed at a rate of 1.425 percent if the consideration is more than \$500,000. Code §11-2102(a)(9)(i). For all other types of conveyances, the tax rate is 2.625% where the consideration is more than \$500,000. Code §11-2102(a)(9)(ii).

Based on the facts presented, we have determined that the tax rate applicable to the conveyance is 1.425% because the Property is a one, two or three family house and is categorized for real property tax purposes in Class 1. Class 1 real property includes all one, two and three family homes, including those used in part for nonresidential purposes but which are used primarily for residential purposes, subject to certain exceptions not relevant here. See New York Real Property Tax Law §1802.1. The tax classification reflects the fact that the Property is used primarily for residential purposes. The Building Code S2 (primarily 2 family with one store or office) is consistent with the tax classification. In the absence of information suggesting the Department's real property classification is incorrect, that classification is controlling for RPTT purposes. As a result, the presence of a doctor's office in the cellar occupying less than 10% of the approximate gross square footage does not disqualify the Taxpayer from using the reduced rate of 1.425 percent when calculating the RPTT due upon the conveyance of the Property.

Very truly yours,

Alan Roth
Acting Assistant Commissioner
for Legal Affairs.

CS:cs