

August 23, 2000

Re: Request for Letter Ruling
FLR No.: 004761-021

Dear

This is in response to your request for a ruling dated May 22, 2000 regarding the application of the New York City Real Property Transfer Tax ("RPTT") to the situation described below. Additional information was received by this office on July 6, 2000.

FACTS

The facts presented are as follows:

On _____, 1998, _____ (the "Taxpayers") entered into a contract with the Limited Partnership ("Sponsor") to purchase Unit _____, a residential condominium unit (the "Primary Unit") for \$ _____,¹ a wine cellar unit and a storage unit, each for a purchase price of \$ _____, and Suite Unit _____ (the "Suite Unit") for a purchase price of \$ _____, all in the same building.

You have represented that the closing of the Primary Unit, the wine cellar unit and the storage unit took place on _____.² RPTT of \$ _____ was paid with respect to the transfer of the Primary Unit, calculated at the rate of 1.425 percent. Separate RPTT returns were filed covering the transfers of the wine cellar and storage units, showing no tax due on these transfers.

The sale of the Suite Unit could not be closed at that time as the builder had not completed work on it and a certificate of occupancy was not available. In your request you state it is anticipated that the closing of the Suite Unit will be in three months. The Suite

¹ The Primary Unit consists of two residential condominium units that were physically combined by the Sponsor prior to sale.

² The copy of the RPTT filed in connection with the transfer and submitted with your request shows the date of the transfer as _____.

Unit is one of similar units located on the floor of the building on a different floor from the Primary Unit. The Suite Unit has its own kitchenette and bathroom. Pursuant to paragraph of the Declaration of Condominium (the "Declaration"), a suite unit can be used only for residential purposes and can be occupied by domestic employees of the owner of a primary unit, as well as family members (as defined in the Declaration) and nonpaying guests of the primary unit owner. However occupancy by family members and nonpaying guests is limited to three months unless the prior written consent of the Condominium Board is obtained. Except for suite units owned by the Sponsor, a suite unit may not be owned independently of a primary unit. Pursuant to the by-laws of the condominium, an owner of a primary unit is not permitted to sell a suite unit to anyone other than another owner of a primary unit and an unauthorized sale of such unit is voidable at the sole election of the condominium board.

ISSUE:

You have requested a ruling as to whether the transfer of the Suite Unit will be considered a transfer of an individual residential condominium unit so as to be taxable under the lower tax rate schedule applicable to the transfer of an individual residential condominium unit.

CONCLUSION:

The Taxpayers contracted to purchase two residential units (together with two nonresidential units) from the Sponsor as part of a single transaction. Therefore, the purchase of the Primary Unit and the Suite Unit is not the purchase of an individual residential condominium unit and is not eligible for the lower tax rate applicable to the purchase of an individual residential condominium unit. The tax is imposed separately on each deed. Because the consideration for the transfer of the Primary Unit exceeded \$500,000, the tax rate applicable to that transfer is 2.625 percent. The consideration for the transfer of the Suite Unit is not more than \$500,000 so the tax rate applicable to that transfer is 1.425 percent.

DISCUSSION:

In general, the RPTT is imposed on each deed at the time of delivery by a grantor to a grantee when consideration for the real property and any improvement thereon exceeds \$25,000. Section 11-2102.a of the Administrative Code of the City of New York (the "Code").

The RPTT is imposed at a rate of one percent of the consideration for a conveyance of a one, two, or three-family house or individual residential condominium unit or individual cooperative apartment where the consideration is \$500,000 or less, and 1.425 percent where the consideration is over \$500,000. For other conveyances, the rate is 1.425 percent where the consideration is \$500,000 or less, and 2.625 percent where the consideration is over \$500,000. Code §11-2102.b(1)(B).

Neither the Code nor the Rules of the City of New York ("RCNY") specifically addresses the proper rate of tax to be applied in the case of a transaction involving the transfer of multiple residential condominium units. However, the rules specifically provide that a transfer of multiple cooperative apartments is not a transfer of an individual cooperative apartment and, therefore, the special lower rates applicable to a transfer of an individual cooperative apartment do not apply. 19 RCNY §23-03(h)(8), examples 3 and 4. In the opinion of the Department of Finance, a sale of multiple condominium units by a single grantor to a single grantee in a single transaction also does not qualify for the lower rates applicable to a conveyance of an individual unit. See Finance Memorandum 00-6, June 19, 2000, Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units, and NYC Dept. of Finance Letter Rulings 944403, 944496, 984736 and 994756. A contrary conclusion would render meaningless the statutory use of the word "individual."

In this case, the Taxpayers contracted for the purchase of two residential units (the Primary Unit and the Suite Unit) from the same grantee. The units are not contiguous and each is a self-contained residence. Although certain restrictions apply to use of the Suite Unit, the conditions placed on the use and resale of the Suite Unit do not change the underlying character of the property being transferred. Therefore, in the opinion of the Department, the sale of these two units is not a transfer of an individual residential condominium unit taxable under the lower rates.

The RPTT is imposed on "each deed" conveying an interest in real property, such as a condominium unit. Code §11-2102.a; 19 RCNY §23-02 definition of "Consideration" paragraph (1) illustration (iii). Under section 339-y of the Real Property Law each condominium unit is a separate parcel of real property and is subject to separate assessment. Although transferred pursuant to a single contract of sale, the Primary Unit has already been transferred by a separate deed and the Suite Unit will be transferred by a separate deed when it is completed. In calculating the tax due, the applicable rate structure is applied to the consideration for each deed, provided each deed represents not less than a single condominium unit or tax lot. Because the consideration for the transfer of the Primary Unit exceeded \$500,000, the tax rate applicable to the transaction is 2.625 percent. The consideration for the transfer of the Suite Unit is not more than \$500,000, thus, the tax rate applicable to that transfer is 1.425 percent.

The Department reserves the right to verify the information submitted.

Very truly yours,

Devora B. Cohn
Associate Commissioner
For Legal Affairs