



FINANCE
NEW • YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

May 23, 2003

RE: Letter Ruling Request
Real Property Transfer Tax
FLR-034801-021

Dear _____ :

This is in response to your request for a ruling dated March 26, 2003 with respect to the applicable New York City Real Property Transfer Tax ("RPTT") rate on the hypothetical transfer of two individual cooperative or condominium units pursuant to separate contracts of sale.

FACTS

The hypothetical facts presented are as follows:

Seller has contracted to sell Purchaser two individual cooperative, or in the alternative, condominium units pursuant to two separate contracts of sale. The larger unit ("Unit 10A") is the family dwelling and the smaller unit ("Unit 2B") is a maid's room. The purchase price of Unit 10A is \$2,500,000 and the purchase price of Unit 2B is \$100,000. Unit 10A and Unit 2B are located on separate floors and they are not connected. The offering plan and applicable by-laws do not contain any provisions or requirements that restrict the transfer of the units to the same purchaser. In fact, from time to time, individual maid's rooms are traded among apartment owners in the building. Although the seller and the purchaser of both units are identical, these units are being transferred pursuant to two separate contracts of sale which provide for different closing dates. The contracts are not dependent upon one another and each contract constitutes an

independent legal obligation of the Purchaser and Seller for the purchase and sale of an individual condominium or cooperative apartment unit.

ISSUES

You have requested a ruling that the transfers of the two individual residential cooperative units, or in the alternative, two individual residential condominium units, constitute two separate and distinct transactions and that, therefore, the lower rates applicable to transfers of individual units should apply. Therefore, you contend that the applicable rate on the transfer of Unit 10A is 1.425% and the applicable rate on the transfer of Unit 2B is 1%.

Additionally, you have requested advice as to whether, in connection with the transfer of the two cooperative apartment units, the consideration should include a proportionate share of the unpaid principal on the underlying mortgage of the cooperative corporation.

CONCLUSION

Based on the hypothetical facts presented, the transfers of the two cooperative or two condominium residential units constitute a transfer of multiple units from a single seller to a single purchaser. Thus, the higher rate schedule would be applicable whether the units transferred were condominiums or cooperative apartments.

Because condominium units are transferred by deeds, the higher rate schedule is applied to the consideration for each deed separately if the units are transferred by separate deeds. Thus, in the case of a transfer of the two condominium units, a tax rate of 2.625% would apply to the transfer of Unit 10A and a tax rate of 1.425% would apply to the transfer of Unit 2B.

In contrast, because cooperative apartments are not transferred by deed, in a sale of shares of a cooperative housing corporation representing more than one apartment from a single seller to a single purchaser, the higher rate schedule will apply to the consideration for the entire transfer and not separately to the consideration for each apartment. Thus, the tax rate of 2.625% would apply to the aggregate consideration for both units.

In determining the amounts of taxable consideration to be included in the case of the transfer of the two cooperative apartments, because the transfer is not treated as the transfer of an individual residential cooperative unit, the consideration includes a proportionate share of the unpaid principal of the underlying mortgage of the cooperative corporation.

DISCUSSION

A. Applicable rates:

In general, the RPTT is imposed on each deed at the time of delivery by a grantor to a grantee, and on transfers of shares of a cooperative housing corporation stock, when the

consideration exceeds \$25,000. Section 2102.a of the Administrative Code of the City of New York (the “Code”).

The RPTT provides for two different rate schedules with respect to the transfer of real property by deed. Code §11-2102.a(9). The RPTT is imposed at the rate of one percent of the consideration for a conveyance of a one, two or three-family house or individual residential condominium unit where the consideration is \$500,000 or less, and 1.425 percent where the consideration is more than \$500,000. *Id.* The lower rate schedule applicable to the sale of an individual residential condominium unit also applies to the transfer of an individual cooperative apartment. Code §11-2102.b(1)(B). For other conveyances of real property the tax rate is 1.425 percent where the consideration is \$500,000 or less, and 2.625% where the consideration is over \$500,000.

The Rules of the City of New York (“RCNY”) specifically deal with the treatment of cooperative housing corporation shares representing more than one apartment. Unlike condominiums, cooperative apartments are not considered real property and are taxed under provisions dealing with the transfer of economic interests in real property. The RCNY provide that a transfer of multiple cooperative apartments by a single seller to a single buyer is not a transfer of an individual cooperative apartment, and therefore, the consideration for all the cooperative apartments transferred is aggregated in order to determine whether the consideration exceeds \$500,000. 19 RCNY §23-03(h)(8), examples 3 and 4. Furthermore, the special lower rates applicable to a transfer of an individual cooperative apartment do not apply. *Id.* 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 on Bulk Sales of Cooperative Apartments and Residential Condominium Units. A contrary conclusion would render meaningless the statutory use of the word “individual”.

The use of separate sales contracts with separate closing dates is not sufficient to render the transfer of the two cooperative units separate transactions. Although you represent that the contracts are not legally dependent, you have not represented that the contracts were separately negotiated or are otherwise unrelated. Unless the facts and circumstances indicate that transfers of multiple condominium or cooperative units are independently negotiated and are unrelated, they will be treated as occurring as part of a single transaction, and will be subject to the higher rate schedule applicable to the transfer of multiple condominium or cooperative residential units. Because the transfer of these two units are deemed to have occurred in one transaction, it is immaterial whether the closings take place on the same day or on separate dates.

In the case of a transfer of condominium units, the RPTT is imposed on the transfer of each deed separately. Thus, the applicable tax rate with respect to Unit 10A is 2.625% because the consideration for the unit is more than \$500,000 and the applicable tax rate for Unit 2B is 1.425% because the consideration for the unit is below \$500,000. However, if the two units being transferred pursuant to these hypothetical facts were cooperative apartments, the consideration for the two units would have to be aggregated,

with the result that the applicable tax rate on both Unit 10A and Unit 2B would be 2.625%.

B. Inclusion of a portion of the unpaid principal of underlying mortgage.

Code section 11-2102.b(2) provides that except in the case of a transfer of an individual residential unit following the original transfer of cooperative stock by a sponsor, the consideration for the sale of stock in a cooperative housing corporation includes a proportionate portion of the unpaid principal of any mortgage on the real property of the cooperative housing corporation. Code section 11-2102.f provides that, with certain exceptions, in the case of a deed, instrument or transaction conveying or transferring on or after August 28, 1997, a one, two or three family house, an individual residential condominium unit or an individual residential cooperative apartment, the consideration for the conveyance or transfer shall not include the amount of any mortgage, lien or other encumbrance placed on the property or interest in connection with, or in anticipation of, the conveyance or transfer, or by reason of deferred payments of the purchase price whether represented by notes or otherwise.

Based on our conclusion that the transaction represents the sale of multiple units from a single seller to a single purchaser, the provisions of Code section 11-2102.f do not apply to this transaction and a proportionate portion of the unpaid principal of the mortgage should be included in the consideration.

Very truly yours,

Devora B. Cohn
Associate Commissioner for Legal Affairs

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