

June 9, 2005

RE: Ruling Request

Real Property Transfer Tax
FLR: 054831-021

Dear _____ :

This letter responds to your request, received March 16, 2005, on behalf of _____, as Trustee (the "Trustee") of the _____ (the "Trust") for a ruling regarding the application of the New York City Real Property Transfer Tax (the "RPTT") to the transfer described below. This office received additional information concerning this request on April 26 and May 11, 2005.

FACTS

The facts presented are as follows:

The Trust is a New York trust, and the Trustee has offices at _____. This ruling concerns three residential condominium Units at the _____ Condominium (the "Condominium") located at _____, New York, NY. The Units are (Block _____, Lot _____) ("Unit 1"), (Block _____, Lot _____) ("Unit 2"), and _____, (Block _____, Lot _____) ("Unit 3"). (Units 1, 2, and the 3 are referred to collectively herein as the "Units.")

By deeds dated _____, 2002, the Trust bought the Units. During _____ 2002, the Trust entered into a contract with an architect and general contractor to convert the Units into one physically combined single-family residence. The contract, with a budgeted price of \$ _____, also involved extensive remodeling of the Units. You have submitted detailed architectural plans concerning the work to be performed and the layout of the apartments following the combination. You have also provided us with copies of the contractor's payment applications, which include descriptions of the work performed and copies of charges from subcontractors, and documents indicating the Trust's payment of those applications. The first such application was submitted in _____ 2002, soon after the Trust acquired the Units, and about _____ were submitted, the last in _____ 2004. The amount billed to combine the Units and remodel the Units, over \$ _____ million, exceeded the contract price.

The New York City Department of Buildings issued a work permit, dated _____, 2003, with respect to the Units. That permit described the work authorized as the “combination of 3 apartments into 1 apartment. No Change of use, occupancy or egress.”

By contract of sale made as of _____, 2005, the Trust agreed to sell the Units to _____ and _____ (the “Buyers”) for \$ _____. In the contract of sale, the Units were described as a single unit, “Unit [1, 2, 3].” By deed dated _____, 2005, the Trust transferred the Units to the Sellers. Like the contract, the deed described the Units as a single unit “known as Unit Nos. [1,2,3].”

You have represented that: “at the time of the transfer, the units have been ‘physically combined.’” As evidence of that, you submitted photographs of the Units that you represented were taken on _____, 2005 showing portions of the combined Units and staircases connecting the Units. You have also represented that: [a]ll bedrooms are located on the _____th floor and the living room is located on the _____th floor. No other owners have access to the _____th or _____th floors at the Condominium other than the combined single residence.”

You have represented that: the Trust “cannot provide a revised certificate of occupancy, a letter of completion, or a revised tax lot designation reflecting the joining of the units.” You have also represented that: the “Department of Buildings has inspected the work at various times during the combination construction process and signed-off approving certain alterations. However, the transfer occurred prior to the [Trust] obtaining a Letter of Completion.”

In connection with the transfer of the Units, the Trustee, on behalf of the Trust, filed a form NYC-RPT. That form listed the three Units and reported \$ _____ as the consideration received. The report calculated the RPTT liability by applying the tax rate applicable to the transfer of an individual residential condominium unit, 1.425 percent, to that consideration.

ISSUE

You have requested a ruling that the transfer of the Units from the Trust to the Buyers will be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for the transfer.

CONCLUSION

Based upon the facts presented and the representations submitted, we conclude that the transfer of the Units from the Trust to the Buyers will be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for the transfer.

DISCUSSION

The RPTT applies to each deed conveying an interest in New York City real property when the consideration for the real property interest exceeds \$25,000. Section 11-2102(a) of the New York City Administrative Code (the "Code"). The tax rate depends on the amount of consideration and the type of property transferred. For “conveyances of one, two or three-family houses and individual residential condominium units,” Code section 11-2102.a(9)(i) imposes a one percent rate

where the consideration does not exceed \$500,000 and a 1.425 percent rate where the consideration is over \$500,000 (the "Individual Rate"). For "all other conveyances," Code section 11-2102.a(9)(ii) imposes a 1.425 percent rate where the consideration does not exceed \$500,000 and a 2.625 percent rate where the consideration is over \$500,000 (the "Non-individual Rate").

In Finance Memorandum 00-6 ("FM 00-6"), Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units, June 19, 2000, the Department addressed the issue of when the Individual Rate applies to a transaction in which a single grantor transfers more than one individual cooperative apartment or condominium unit to a single grantee. Such transactions, described as bulk sales, are generally taxed at the Non-individual Rate because those transfers are not transfers of an "individual" apartment or unit under Code section 11-2102.a(9).

In FM-06, the Department stated that when adjacent cooperative apartments or residential condominium units have been physically combined into a single residence, the combined unit constitutes an "individual" apartment or unit for purposes of Code section 11-2102.a(9). As a result, the transfer of one or more apartments or units that have been combined before the sale will be subject to tax at the Individual Rate. FM-06 also makes clear that "the fact that two or more units or apartments will be combined following the transfer will not be sufficient to permit the transaction to be treated as a transfer of an individual apartment or unit taxable at the lower rates."

In addition, the Department stated that, in making the determination whether the apartments or units have been physically combined at the time of the sale, it would examine all of the applicable facts and circumstances. FM-06 also states that: "the issuance of a revised Certificate of Occupancy, a letter of completion from the Buildings Department, or a revised tax lot designation reflecting the joining of two or more apartments or units would be acceptable evidence of such a combination. However, the absence of any of these documents will not be determinative."

Applying FM-06 to this case, the transfer of the Units will be subject to tax at the Individual Rate if the Units were physically combined at the time of sale. FM-06 states that the Department will accept the "issuance of a revised Certificate of Occupancy, a letter of completion from the Buildings Department or a revised tax lot designation reflecting the joining of two or more apartments or units" as evidence that the Units have been combined at the time of the sale. You have indicated that the Trust does not have any of those documents.

FM-06 provides that, in the absence of the documents referred to above, other evidence can be sufficient to show that the Units were physically combined at the time of sale. You have provided evidence that shows that the Trust took steps to combine the Units shortly after it acquired them in April 2002. In that month, it hired an architect and contractor to combine and remodel the Units and it had detailed floor plans showing the work to be performed and the floor plan of the combined Units prepared. You have also provided evidence to show that extensive work to combine and remodel the Units began shortly after the construction contract was executed and continued for over two years and that the Trust paid for that work. Approval by the Department of Buildings to combine the Units was received in 2003. These steps were

taken well in advance of the transfer of the Units in 2005, providing ample time for the work to be performed. In addition, the contract of sale and the deed both described the Units as a single unit. Finally, you have provided photographs of the Units taken at the time of the transfer showing the combined Units, including, of particular importance, the staircases that connect the Units.

Based upon the facts and representations submitted, we conclude that the transfer of the Units from the Trust to the Buyers will constitute the transfer of an individual residential condominium unit and taxed at the Individual Rate as provided in Code section 11-2102.a(9)(i).

* * *

The Department of Finance reserves the right to verify the information submitted.

Sincerely,

Ellen E. Hoffman
Assistant Commissioner for Tax Law and Conciliations

LED: ld