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THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
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January 4, 2008

Re: Request for a letter ruling
Hypothetical
Real Property Transfer Tax
FLR-064862-021

Dear

This is in response to your ruling request regarding the applicable tax rate under the New York City Real Property Transfer Tax ("RPTT") to the transfer of condominium units in a new hotel (the "Hotel"). For reasons discussed below, we have determined that the rate applicable to the transfer of commercial property applies to the hypothetical facts presented in your ruling request.

FACTS

The facts presented are as follows:

The Hotel will consist of approximately xxx guest rooms and/or suites, approximately xxx of which will be constituted as separate condominium units (the "Condominium Hotel Units") and approximately xxx of which will be constituted as part of one additional condominium unit. All of the guest rooms/suites will be luxury hotel accommodations with bedroom(s), sitting areas or rooms and limited kitchen facilities. The Condominium Hotel Units will be sold to individuals who will be entitled to occupy the units for their own residential purposes for no more than 4 months in each calendar year in the aggregate. Pursuant to NYC Department of Building requirements and zoning restrictions, when not occupied by the purchaser, the Condominium Hotel Units must be made available for rental as transient hotel accommodations. The Certificate of Occupancy for floors containing the Condominium Hotel Units will state "hotel".

The offering plan requires the purchaser to enter into an agreement with the operator of the Hotel pursuant to which the operator of the Hotel will provide all the services of a luxury hotel to the Condominium Hotel Unit and its occupants. In addition, the purchaser is required to permit the operator of the Hotel to furnish and maintain the Condominium Hotel Unit pursuant to uniform standards set by the operator of the Hotel that are consistent with transient hotel units in the Hotel and with the unit's intended use by transient guests in a luxury hotel for the majority of the year. Each Condominium Hotel Unit will contain a locked storage closet for use by the purchaser to secure personal objects when the purchaser is not in occupancy and the Condominium Hotel Unit is being used by transient hotel guests. The purchase price of a Condominium Hotel Unit under the condominium offering plan will be more than \$1,000,000.

ISSUE

What is the applicable tax rate under the RPTT?

CONCLUSION

We have determined that a Condominium Hotel Unit is not an individual residential condominium unit and that the appropriate tax rate is the 2.625% rate applicable to the transfer of commercial property where the consideration is more than \$500,000.

DISCUSSION

Section 11-2102(a)(9) of the Administrative Code of the City of New York (the “Code”) provides that with respect to conveyances of one, two or three-family houses and individual residential condominium units where the consideration is over \$500,000, the RPTT is imposed at the rate of 1.425%. In the case of all other conveyances where the consideration is over \$500,000, the RPTT is imposed at the rate of 2.625%. Code §11-2102(a)(9)(ii).

Section 23-03(b)(9) of Title 19 of the Rules of the City of New York (“RCNY”) states that for purposes of determining whether the lower residential tax rate applies to a condominium unit, an individual condominium unit that is used for residential purposes is presumed to be a residential condominium unit, unless the residential use is de minimis. The rule then provides an illustration of this general statement, Illustration 9(i):

X owns an individual condominium unit in New York City. X leases the unit to Y, who uses the unit solely as a residence. During the term of the lease, X sells the unit to Z for \$600,000. The unit is deemed a residential condominium unit, and the tax is calculated as follows: 1.425% of \$600,000, for a tax due of \$8,550. Although the unit produced income for X, the unit was used for residential purposes.

Also relevant is Illustration (i) at 19 RCNY §23-03(b)(10), which illustrates a case where the higher tax rate is applicable:

An artist owns an individual condominium unit in New York City that is located in a building classified as class two property pursuant to section 1802 of the Real Property Tax Law, and which the artist uses as a studio. Although the artist maintains a separate residence, the artist keeps a bed in the studio and spends twelve nights per year in the studio. When the artist sells the unit for \$300,000, the tax will be calculated as follows: 1.425% of \$300,000, for a tax due of \$4,275. Since the residential use of the units is de minimis, the unit is not deemed a residential condominium unit.

The type of arrangement proposed under the hypothetical facts presented in this ruling request was not contemplated when the RPTT rules were drafted. The above illustrations from 19 RCNY §23-03 rely on fact patterns showing a type of residential use that is very different in character from the contemplated use of the Condominium Hotel Unit. The condominium in the first illustration is being used as a residence at all times and the only issue is the fact that its owner is profiting from renting it. The second illustration deals with a condominium that is classified as residential for Real Property Tax purposes. The illustration provides that notwithstanding the residential classification if the residential use is de minimis and the condominium is used for commercial purposes, it will be subject to the higher tax rate scheme. Both illustrations are unlike

the situation presented by the hypothetical facts where the condominium serves as a hotel room and where, pursuant to the purchasing documents, significant restrictions are placed on the owner's use of the Condominium Hotel Unit even though the owner's use of the Unit as a residence may be more than de minimis.

Under the hypothetical facts presented as the subject of this letter ruling, the Certificate of Occupancy of the floor on which the Condominium Hotel Unit is located will state that it is a hotel (not a residence) and the use of the Condominium Hotel Unit as a residence will be strictly curtailed. The requirement that the Condominium Hotel Units be used for commercial hotel purposes and the location of these units in property zoned as a hotel differentiate these units from ones addressed in the Rules. In this situation, both the classification of the property for zoning purposes and its use are consistent with the determination that the Condominium Hotel Units are not residential. Therefore, we have determined that the higher RPTT rate of 2.625% will apply to the conveyance of a Condominium Hotel Units.

Very truly yours,

Dara Jaffee
Assistant Commissioner for
Legal Affairs

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