



Units will not be aggregated with the transfers of the parking spaces so that the transfers of the Units will be eligible for taxation as transfers of individual residential units and so that the consideration for the parking spaces will not be included in the taxable consideration for the Units.

Discussion:

In general, the RPTT is imposed on each deed at the time of delivery by the grantor to a grantee when consideration for the real property and any improvement exceeds \$25,000. Section 11-2102.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 over \$500,000. Id. For other conveyances of real property the tax rate is higher; the rate is 1.425 percent where the consideration is \$500,000 or less, and 2.625 percent where the consideration is \$500,000. Id.

Both the Code and the Rules of the City of New York ("RCNY") are silent as to whether the lower tax rate applicable to the sale of an individual residential condominium is to be applied in the case of the sale of multiple condominium units by one grantor to a single grantee.

The RCNY specifically deals with the treatment of transfers 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. However, as is the case with conveyances of real property, the Code provides for special lower rates for certain specified transfers including a transfer of an individual cooperative apartment. Code §11-2102.b(1)B. The RCNY provides explicitly that a bulk transfer of cooperative apartments is not a transfer of an individual cooperative apartment and, therefore, the consideration for all of the cooperative apartments transferred is aggregated in order to determine whether the consideration exceeds \$500,000.

Furthermore, 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. As in the case of a sale of multiple cooperative apartments, a sale of multiple condominium units by a single grantor to a single grantee does not qualify for the lower rates applicable to a conveyance of an individual unit.

The RPTT is calculated separately for each deed transferred. Code §11-2102.a; Title 19 RCNY §23-02,

"Consideration", Illustration (iii). The consideration paid for multiple deeds transferring real property to a single purchaser is not aggregated in determining the applicable rate of tax. Id. Under the proposed transaction, except for the couple that is purchasing two Units<sup>1</sup>, the Taxpayer is transferring an individual residential condominium unit by separate deed to each of the purchasers and the consideration for each of these Units is under \$500,000. Therefore, with the exception of the two Units being transferred to the couple, the rate applicable to each of the deeds transferring a Unit is the one percent tax rate applicable to the sale an individual residential condominium unit.

It is our opinion that this lower tax rate applies even in the case where the purchaser of a Unit also acquires a parking space because, under the facts presented, the acquisition of the Unit and the parking space are separate transactions. Because, based on the facts, the conveyance of the Unit and the parking space are deemed to be separate transactions, the purchaser of the Unit is not disqualified from using the lower tax rate schedule applicable to the transfer of an individual residential condominium unit even though the parking space is not residential in nature or because multiple condominium units are being transferred. Several factors present in this case justify treating the conveyance of the Unit and the parking space as separate transactions. First, both the Unit and the parking space represent separate tax lots that are being transferred by separate deed. Secondly, a Unit and a parking space are different types of properties; a Unit is residential in nature while the parking space is commercial. Lastly, even though restrictions apply, the conveyance of a parking space is not contingent on the simultaneous transfer of a Unit.

The transfers of the parking spaces are not subject to tax because the consideration paid for each separate deed for each of the parking spaces is under \$25,000.

Very truly yours,

Devora B. Cohn  
Assistant

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<sup>1</sup>In the case of a single grantee of multiple units, the transaction may be subject to the higher tax rate schedule applicable to the sale of multiple condominium units depending on the facts and circumstances of the situation, such as whether the units are still separate or have already been combined.

Commissioner,  
CS:cs

Legal Affairs