

Taxpayer 1 will hold title to Property 3.

To that end, the following conveyances are proposed: Taxpayer 1, as Executor for the Mother, will convey title to Properties 1 and 2 to Taxpayer 2, and Taxpayers 1 and 2 will convey Property 3 to Taxpayer 1. You have represented that, if the Properties are conveyed as proposed, no money, property, or anything of value, other than the Properties will be exchanged, and that the Properties are unencumbered by mortgages or other indebtedness.

ISSUE

You have requested that we rule that the conveyances of Properties 1, 2, and 3 as set out above will not subject to the RPTT.

CONCLUSION

Based on the facts presented and the representations submitted, we have determined that the transactions will be taxable under section 23-02 of title 19 of the Rules of the City of New York (the "RCNY") and section 11-2102(a) of the New York City Administrative Code (the "Code") as described below.

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. Code § 11-2102(a). The definition of "deed" in 19 RCNY section 23-02 provides that it means "any document or writing (other than a will)." Illustration 2 of that definition provides:

A deed given by an executor in accordance with the terms of a will is not subject to tax; however, if by reason of a consideration passing between devisees, one of them takes a greater share in the realty than that to which he is entitled under the will, the deed given by the executor to convey such greater share is subject to tax computed upon the amount of such consideration.

In this case, under the Mother and Father's wills, each of the Properties is to be divided equally between Taxpayers 1 and 2 to share and share alike. Thus, under the terms of the wills, Taxpayers 1 and 2 are granted title to the Properties as tenants in common. See New York State Estates, Powers and Trust Law § 6-2.2. Under your proposal, Taxpayer 1, as Executor for the Mother, will convey title to Properties 1 and 2 to Taxpayer 2, with the result that Taxpayer 2 will receive a 50 percent greater share in those Properties than that to which he was entitled under the wills. Similarly, Taxpayers 1 and 2 will convey Property 3 to Taxpayer 1, with the result that Taxpayer 1 will receive a 50 percent greater share in Property 3 than that to which he was entitled under the wills. As set out in illustration 2 of 19 RCNY section 23-02, if, by reason of consideration passing between devisees, one of them takes a greater share in realty than that to which he is

entitled under a will, the RPTT is computed upon the amount of consideration paid for that greater share.

Code section 11-2101.9 defines "consideration" as the price paid or required to be paid for the property by money, property, or anything of value. It includes the amount of any indebtedness on the property, whether or not that indebtedness is assumed. You have represented that, if the Properties are conveyed as proposed, no money, property, or anything of value apart from the Properties will be exchanged and that the Properties are unencumbered by mortgages or other indebtedness.

Consideration also includes the value of the interests in the Properties being exchanged. When Taxpayer 2 transfers the 50 percent interest in Property 3 to which he is entitled under the wills to Taxpayer 1, he will receive a 50 percent greater interest in Properties 1 and 2 than that to which he was entitled under the wills. Thus, the consideration Taxpayer 1 receives for transferring his 50 percent interest in Properties 1 and 2 to Taxpayer 2 will be 50 percent of the fair market value of Property 3. Similarly, when Taxpayer 1 transfers the 50 percent interest in Properties 1 and 2 to which he is entitled under the wills to Taxpayer 2, he will receive a 50 percent greater interest in Property 3 than that to which he was entitled under the wills. Thus, the consideration Taxpayer 2 receives for transferring his 50 percent interest in Property 3 to Taxpayer 1 will be 50 percent of the fair market value of Properties 1 and 2.

The RPTT will be imposed under Code section 11-2102(a) if the consideration as computed above exceeds \$25,000.

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

Very truly yours,

Devora B. Cohn
Associate Commissioner
for Legal Affairs

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