



September 2, 2008

New York, NY 10017

Re: Request for Ruling

Units PHC and PHD
FLR 084875-021

Dear :

This is in response to your request for a ruling on behalf of xxxxxxxx (the "Taxpayer") with respect to the correct tax rate to be used in calculating the New York City Real Property Transfer Tax ("RPTT") on the conveyance of two adjoining apartments that the Taxpayer intends to combine immediately after obtaining title. You have requested a ruling that the lower tax rate applicable to the conveyance of a single residential apartment be used for purposes of calculating the RPTT owed. The Department has concluded that, under the facts presented in this case, the lower tax rate is appropriate.

FACTS

The facts presented are as follows:

On April 3, 2007, XXX Development Corp. (the "Corporation") entered into two Purchase Agreements (collectively the "Purchase Agreements") for the purchase of apartments PHC and PHD (collectively, the "Units") with XXXXX^h LLC (the "Sponsor") in the condominium located at XXXXXX Street, New York, New York (the "Building"). According to the Condominium Offering Plan, the Building is a mixed use building containing ten stories with 47 residential units (including 1 superintendent unit) and 18 storage spaces. The cost of each unit that the Taxpayer is purchasing is over \$500,000. It was anticipated that construction of the Building would be completed during or around June 2008 and that closings would begin shortly thereafter. The Units are located on the top floor of the Building and are adjacent to each other. The Taxpayer is the sole shareholder of the Corporation. The Taxpayer has always intended to combine the

Units and make the resulting combined apartment his primary residence. Accordingly, during negotiations with the Sponsor and the Sponsor's counsel, you and the Taxpayer had requested the Units be combined before closing. The Sponsor refused to accommodate the Taxpayer citing the additional costs and expenses that would need to be incurred, the necessary amendment to the Condominium Plan and a host of other concerns. Therefore, the Taxpayer through the Corporation agreed to purchase the two Units and then combine them after the Sponsor transferred title to the Units.

You contend that the appropriate tax rate is the 1.425% rate that is applicable to a single apartment where the consideration is over \$500,000 despite the fact that the actual combination will take place after the closing. As evidence of the Taxpayer's intent to combine these units you have submitted a copy of the design engagement letter, invoices and checks totaling over \$6,000 to the firm doing the design and architectural drawings (including demolition drawings and construction drawings) necessary for the combination. As evidence of the reason that combination must take place after the closing, you have submitted a letter dated February 26, 2008 from the Sponsor's attorney denying the request to combine.

ISSUE

Is the lower rate of 1.425% applicable to the conveyance of two adjoining condominium apartments which have not been combined prior to closing because of the Sponsor's refusal but where the intent is that the units will be combined immediately after the Taxpayer takes title to be used as the Taxpayer's primary residence?

CONCLUSION

The applicable rate in these circumstances for purposes of calculating the RPTT owed is 1.425%.

DISCUSSION

The RPTT is imposed on each deed at the time of delivery by a grantor to a grantee when consideration for the real property and any improvement thereon exceeds \$25,000. Section 11-2102.a of the Administrative Code of the City of New York (the "Code"). The RPTT is imposed at a 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. For other conveyances of real property the rate is 1.425 percent where the consideration is \$500,000 or less, and 2.625 percent where the consideration is over \$500,000. Code §11-2101.2.

Under ordinary circumstances, a bulk transfer of two or more residential condominium units from a single grantor to a single grantee does not qualify for the lower rate schedule applicable to the conveyance of an individual condominium unit. However, if two or more units are combined into a single unit prior to the conveyance, the transfer be treated as the conveyance of an individual unit. Generally, in order to be treated as a single unit, the units need to be combined prior to closing. However, when the facts are particularly clear with regard to the intent to combine apartments, we will treat the units as a single apartment for purposes of calculating the RPTT.

The question of whether the units have been purchased with the intent to combine them, depends on all the facts and circumstances. In this case you have submitted a letter from the Sponsor's attorneys indicating that the Sponsor has refused to allow the units to be combined prior to closing. You have also submitted architectural drawings that you state will be used to combine the apartments. Based on these facts, we have

concluded that the correct rate of tax is the 1.425% applicable to the transfer of a single residential unit. This conclusion is based on the assumption that the apartments will be combined according to plan. You have agreed that if the work to combine the apartments is not commenced within 15 days of closing, the Taxpayer will pay the additional RPTT owed on the conveyance of the units using the 2.625% rate. You have also agreed to pay the higher rate if the combination is not substantially completed within one year from the closing or if either of the apartments is sold individually within a year following the closing.

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

Very truly yours,

Dara Jaffee
Assistant Commissioner
Office of Legal Affairs

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