



May 13, 2010

Re: Request for Ruling
Real Property Transfer Tax

FLR-084879-021

Dear :

This letter is in response to your request, received on June 30, 2008, for a ruling on whether the sale of a sixth floor cooperative apartment and a ground floor supplemental apartment should be treated as the sale of an individual residential cooperative for purposes of the Real Property Transfer Tax ("RPTT"). Additional information was received on or about July 9, 2008, December 8, 2009 and January 8, 2010.

FACTS

The facts presented are as follows:

(the "Taxpayer") owned shares in a cooperative apartment corporation (the "Co-op") and held the proprietary leases for an apartment on building's sixth floor (the "Co-op Unit") and a supplemental apartment located on the ground floor known as apartment 1 B/C (the "Supplemental Unit"). In 2008 the Taxpayer sold the shares for both the Co-op Unit and the Supplemental Unit to the same purchaser under the same contract of sale. The Co-op's bylaws require that when a shareholder of the Co-op sells the shares to their primary residential Co-op Unit they must also sell or transfer the shares corresponding to any supplemental apartment or servants quarters on the Co-op building's first floor. The bylaws provide that the shares for supplemental apartments or servants quarters must be transferred to the purchaser of the shares for the primary residential Co-op Unit, or to another shareholder of the Co-op, either simultaneously, or within a period of time acceptable to the Co-op's board of directors.

the Counsel to the Co-op, has represented in an affidavit that the Co-op's bylaws require a supplemental apartment such as the Supplemental Unit to be used for residential purposes only by the shareholder of the shares for the primary residential Co-op Unit, by members of that shareholder's family or by that shareholder's employees or staff. The Taxpayer's employee has submitted an affidavit stating that he was an employee of the Taxpayer during that time that the Taxpayer was shareholder of the Co-op and lived in the Co-op Unit, and that he lived in the Supplemental Unit as part of his employment.

ISSUE

Whether the sale of the Co-op Unit and the noncontiguous Supplemental Apartment located on a separate floor should be treated as the sale of an individual cooperative apartment so that the lower tax rate schedule for RPTT, as provided in section 11-2102(b)(1)(B)(i) of the Administrative Code of the City of New York (the “Code”), applies?

CONCLUSION

We have determined that, under the facts and circumstances presented, the sale of the Co-op Unit and the noncontiguous Supplemental Apartment is the sale of an individual cooperative apartment subject to the lower tax rate schedule under Code section 11-2102 (b)(1)(B)(i).

DISCUSSION

Section 11-2102 of the Code imposes the RPTT on the conveyance of real property or the transfer of an economic interest in real property located in the City where the consideration for the conveyance or transfer exceeds \$25,000. Code section 11-2102(b)(1)(B)(i) imposes a special lower rate for transfers of economic interests in “a one, two or three family house, an individual cooperative apartment, an individual residential condominium” and certain other individual dwelling units. The RPTT rate for these transfers is 1 percent of the consideration if the consideration is \$500,000 or less, and 1.425 percent of the consideration if the consideration is more than \$500,000. Transfers of economic interests in real property that do not qualify for this special lower rate are subject to an RPTT rate of 1.425 percent of the consideration if the consideration is \$500,000 or less, and 2.625 percent of the consideration if the consideration is more than \$500,000. Code §11-2102(b)(1)(B)(ii).

In *Matter of Rosenblum*, TAT(E)01-31 (RP) (9/12/2006), the New York City Tax Appeals Tribunal (the “Tribunal”) addressed the question of the rate applicable to the transfer of a primary residential condominium unit and a “suite unit” located on a separate floor from the residential condominium unit under Code section 11-2102(a)(9)(i). The Tribunal determined that the transfer was a transfer of an individual residential condominium unit subject to the lower rate schedule under Code section 11-2102(a)(9)(i). Note that Code section 11-2102(a)(9), which imposes the RPTT on the conveyances of deeds, provides the same rate schedule that Code section 11-2102(b)(1)(B) provides for transfers of economic interests in real property, and is for all relevant purposes substantially the same as Code section 11-2102(b)(1)(B). In reaching its determination, the Tribunal in *Rosenblum* concluded that the suite unit was not a separate individual residential condominium, but was an integral part of the primary residential condominium unit. The Tribunal relied on the fact that, except in the case of the condominium’s sponsor, a suite unit could not be owned independently of a residential unit. The Tribunal further noted the suite unit could only be used for residential purposes by the domestic employees, family members and nonpaying guests of a residential unit owner.

Here, based on the facts and circumstances presented, the situation appears to be substantially similar to that presented in *Rosenblum*. Under the Co-op’s bylaws, when shareholders sell their shares in a primary residential Co-op unit, they must transfer the shares corresponding to the supplemental apartment either to the purchaser of the primary residential unit or to another shareholder of the Co-op. The Co-op’s bylaws do not permit servants quarters or a supplemental apartment to be owned independently of the shares for a primary residential Co-op unit. Further, the Co-op’s counsel has represented that the Co-op permits a supplemental apartment such as the Supplemental Unit to be used for residential purposes, but only by the shareholder of the shares for primary residential Co-op unit, members of the shareholder’s family and the shareholder’s employees and staff. In addition, the Taxpayer’s employee has represented that he was an

employee of the Taxpayer during the time that the Taxpayer was a shareholder and resident of the Co-op and that he lived in the Supplemental Unit as part of his employment.

Based on the above facts and representations, and the Tribunal's *Rosenblum* decision, it is our opinion that the sale of the shares for the Co-op Unit and the Supplemental Unit should be treated as a sale of an individual cooperative apartment subject to the lower tax rate schedule under Code section 11-2102(b)(1)(B)(i).

The Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Sincerely,

Beth Goldman
General Counsel

cc: Robert A. Buckley, Esq.