



January 8, 2010

RE: NY.C. Real Property Transfer Tax
FLR No.: 09-4899-021

Dear Sirs:

This is in response to your request for a letter ruling from the Department of Finance (the "Department") as to the tax rate applicable for purposes of the New York City Real Property Transfer Tax ("RPTT") with respect to the transfer of a building located at Bronx, N.Y., (the "Property").

FACTS

The facts presented are as follows:

The Property consists of one three-story building with a cellar. The building is in Tax Class 1 and is classified as Building Code S2 ("primarily 2 family with one store or office") on the City's tentative assessment roll for 2009-10. The building is predominantly a residential building, consisting of an eating establishment on the first floor and two residential units on the second and third floors. The lease submitted with the request indicates that the commercial tenant is also leasing 1/3 of the basement space. A property report by NYC Oasis that you submitted with the request indicates that the building has a gross total area of 4,200 square feet. The report states that 33 percent of the area of the building is occupied by commercial space (1,386 square feet), and the remaining area (2,814 square feet) is used for residential purposes.

ISSUE

You have requested a ruling as to whether the conveyance of the Property is subject to the rate of 1.425 percent applicable to the conveyance of a one, two or three family house where the consideration is more than \$500,000.

CONCLUSION

Based on the facts presented and the documents submitted, we have determined that the tax rate applicable to the conveyance of the Property is 1.425 percent.

DISCUSSION

Section 11-2102 of the Administrative Code of the City of New York (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. For a conveyance of a one, two or three-family house or an individual residential condominium unit, the RPTT is imposed at a rate of 1 percent if the

conveyance is \$500,000 or less, and a rate of 1.425 percent if the consideration is more than \$500,000. Code §11-2102(a)(9)(i). With respect to all other conveyances where the consideration is more than \$500,000, the tax rate is 2.625 percent. Code §11-2102(a)(9)(ii).

Based on the facts presented, we have determined that the tax rate applicable to the conveyance is 1.425 percent because the Property is a one, two or three family house and is categorized for real property tax purposes in Class 1. Class 1 real property includes one, two and three family homes, including those that are “used in part for nonresidential purposes but which are used primarily for residential purposes,” subject to certain exceptions not relevant here. See New York Real Property Tax Law §1802.1. The tax classification reflects the fact that the Property is used primarily for residential purposes. The Building Code S2 (primarily 2 family with one store or office) is consistent with the tax classification. In the absence of information suggesting the Department’s classification of the Property as Class 1 is incorrect, that classification is controlling for RPTT purposes. As a result, the presence of an eating establishment occupying approximately one-third of the approximate gross square footage of the building does not prevent the use of a reduced rate of 1.425 percent when calculating the RPTT due upon the conveyance of the Property.

The Department reserves the right to verify the facts submitted and to modify its decision accordingly.

Very truly yours,

Beth E. Goldman
General Counsel

CS:cs