



June 25, 2010

**RE:** Ruling Request  
Real Property Transfer Tax  
FLR: 094901-021

Dear:

This letter responds to your request, dated October 13, 2009, on behalf of (the "Taxpayer"), for a ruling that the transfer of two adjacent condominium units to be used as one unit should be treated as the transfer of an individual residential condominium unit for purposes of the New York City Real Property Transfer Tax (the "RPTT"). This office received additional information concerning this request on February 3 and 23, 2010.

### **FACTS**

The facts presented are as follows:

The Property. This ruling addresses the Taxpayer's acquisition of two adjacent residential condominium units, ("Unit 1") and ("Unit 2") at the (the "Condominium") located at. As described below, Units 1 and 2 have since been combined into one unit (the "Property"). The Taxpayer purchased the Property as a residence for a couple, ("H") and ("W").

The Taxpayer is an LLC owned by a trust for the benefit of W and the son of W and H. The Taxpayer was formed for estate planning purposes. H and W are tenants of the Property, and the Taxpayer is the landlord.

Purchase and renovation. On, the Taxpayer entered into contracts to purchase Unit 1 and Unit 2 (the "Purchase Agreements") from the sponsor of the Condominium (the "Sponsor"). The Condominium was in a newly-constructed building, and the Taxpayer entered into the Purchase Agreements before the building was complete. The Condominium's offering plan offered the space as two units, and, while they were marketed and shown as separate units, they had never been occupied as separate units. H and W were only interested in the space as one larger unit. Taxpayer closed on both units on. The purchase price on each unit separately exceeded \$500,000, but was less than \$1 million.

As an integral part of the purchase, the Sponsor agreed to combine Units 1 and 2 into one unit according to detailed specifications set out in the Purchase Agreements. The work to be done included taking down walls between the units, removing and replacing the floor in one unit to match the other unit, removing the kitchen in one unit, and performing other work, such as electrical and plumbing alterations. The construction work was financed through an Escrow Agreement, , between the Sponsor and H and W. Under the Escrow

Agreement, H and W deposited a designated sum with a third-party (the “Escrow Agent”). The Escrow Agreement provided five benchmarks, each setting out certain construction to be completed by the Sponsor. As each benchmark was completed, the Escrow Agent would pay the designated amount to the Sponsor.

By, when the walls were broken through and one of the kitchens was removed, the units were physically one unit. H and W moved into the Property on, when all of the design finish work was completed to their satisfaction and their furniture was mostly delivered. The Sponsor is in the process of obtaining a new Certificate of Occupancy for the building, on which the Property will be shown as one unit. The Taxpayer obtained one title insurance policy covering the Property.

Tax matters. The Taxpayer agreed to file the necessary forms relating to RPTT obligations with respect to the transfer and to pay the required tax. The Taxpayer reported the transaction as a bulk sale of two condominium units for consideration in excess of \$500,000, resulting in a applicable tax rate of 2.625 percent, rather than the lower tax rate of 1.425 applicable to transfers of an individual residential condominium unit, as described more fully below.

New York State Tax Law section 1402-a imposes an additional tax of one percent of the consideration (commonly called the “Mansion Tax”) when the consideration for the transfer exceeds \$ 1 million. The consideration for each unit separately was less than \$ 1 million. When the consideration for the units is aggregated, however, it exceeds \$ 1 million. As a result, you have represented that the Taxpayer will pay the Mansion Tax with respect to its acquisition of the Property in the event that it receives a ruling that the acquisition of the Unit 1 and 2 may be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for purposes of the RPTT.

## **ISSUE**

You have requested a ruling that the transfer of Unit 1 and Unit 2 from the Sponsor to the Taxpayer will be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for the transfer.

## **CONCLUSION**

Based upon the facts presented and the representations submitted, we conclude that the transfer of Unit 1 and Unit 2 from the Sponsor to the Taxpayer should be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for the transfer.

## **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. Section 11-2102(a) of the New York City Administrative Code (the “Code”). The tax rate depends on the amount of consideration and the type of property transferred. For “conveyances of one, two or three-family houses and individual residential condominium units,” Code section 11- 2102.a(9)(i) imposes a 1.0 percent rate where the consideration does not exceed \$500,000 and a 1.425 percent rate where the consideration is over \$500,000 (the “Individual Rate”). For “all other conveyances,” Code section 11-2102.a(9)(ii) imposes a 1.425 percent rate where the consideration does not exceed \$500,000, and a 2.625 percent rate where the consideration is over \$500,000 (the “Non-individual Rate”).

Individual residential condominium units. In Finance Memorandum 00-6 (“FM 00-6”), Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units, June 19, 2000, the Department of Finance (the “Department”) addressed the issue of when the Individual Rate applies to a transaction in which a single grantor transfers more than one individual cooperative apartment or condominium unit to a single grantee. Such transactions, described as bulk sales, are generally taxed at the Non-individual Rate because those transfers are not transfers of an “individual” apartment or unit under Code section 11-2102.a(9).

In FM-06, the Department stated that when adjacent cooperative apartments or residential condominium units have been physically combined into a single residence, the combined unit constitutes an “individual” apartment or unit for purposes of Code section 11- 2102.a(9). As a result, the transfer of one or more apartments or units that have been combined will be subject to tax at the Individual Rate. In addition, the Department stated that, in determining whether the apartments or units have been combined, it would examine all of the applicable facts and circumstances at the time of the sale.

The New York City Tax Appeals Tribunal addressed the issue of when the Individual Rate applies to a transaction in which a single grantor transfers more than one condominium unit to a single grantee in In the Matter of David Gruber, NYC TAT, Decision Nos. TAT(E)03-7(RP), TAT(E)03-8(RP) and TAT(E)03-9(RP) (09/12/2006), aff’g in part, NYC Tax Appeals Tribunal, ALJ, Dkt. No. TAT(E)03-7(RP), TAT(E)03-8(RP), TAT(E)03-9(RP) (05/5/2005). In Gruber, the Taxpayer sought to acquire a floor of a condominium that had been presented in the offering plan as three separate units. Consistent with that Offering Plan, walls separated the floor into three different units. The purchase agreements contemplated that the taxpayer would purchase all three units and included cross-default provisions. Before the closing on the units, the taxpayer hired an architect to prepare plans for the combination of the units into one apartment. Separate closings for the Units subsequently took place. Following the closings, the construction work according to the architect’s plans was carried out. The Tax Appeals Tribunal, affirming the Administrative Law Judge in part, held that, on the facts of the case, the “[t]ransfers did not comprise the conveyance of more than one residential condominium unit.” As a result, the transfer was subject to tax under the RPTT at the Individual Rate.

The facts presented here closely resemble those in Gruber: the Condominium’s offering plan identified the space as separate units, and they were marketed and shown that way; the units had never been used by residents as separate units; the Taxpayer, at the time of purchase, arranged to combine the units, and the combination of the units was an integral part of the purchase; the Sponsor agreed to combine the units according to detailed specifications set out in the Purchase Agreements; the work to be done included removing walls, replacing the floor in one unit, removing a kitchen, and electrical and plumbing alterations; the construction work was financed through the Escrow Agreement, funded by the H and W, and payments were made to the Sponsor in accordance with certain benchmarks; and by ten days following the closing, the units were physically combined. In addition, the Sponsor is in the process of obtaining a new Certificate of Occupancy for the building, on which the Property will be shown as one unit, and the Taxpayer obtained one title insurance policy covering both units.

As a result, like Gruber, an examination of all of the applicable facts and circumstances reveals that the space, while nominally divided into separate units, was effectively one unit at the time of transfer. As a result, consistent with FM 00-6, the transfer should be treated as the transfer of an individual residential condominium unit and be subject to tax at the Individual Rate, 1.425 percent of the consideration.

The Mansion Tax. New York State Tax Law section 1402-a imposes an additional tax of 1.0 percent of the consideration when the consideration for the transfer exceeds \$ 1 million. Because the consideration for the Unit 1 and Unit 2 in the aggregate exceeded \$ 1 million, you have represented that the Taxpayer will pay the

Mansion Tax with respect to its acquisition of the Property in the event that it receives a ruling that the acquisition of the Unit 1 and 2 may be treated as the transfer of an individual residential condominium unit and taxed at 1.425 percent of the consideration for purposes of the RPTT.

Based upon the facts and representations submitted, we conclude that the transfer of the Property from the Sponsor to the Taxpayer will constitute the transfer of an individual residential condominium unit and be taxed at the Individual Rate as provided in Code section 11-2102.a(9)(i).

\* \* \*

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

Very truly yours,

Beth Goldman  
General Counsel

LED:ld