



May 6, 2011

**Re: Request for Ruling
Real Property Transfer Tax**

FLR-104915-021

Dear :

This letter is in response to your request for a ruling dated November 24, 2010 and received on November 30, 2010, regarding the application of the New York City Real Property Transfer Tax ("RPTT") to the transaction described below. Additional information was received on December 3 and 8, 2010, and March 3 and 9, 2011.

FACTS

You have stated that, on March 5, 2009, (the "Father") and his son purchased Unit 3702 in (the "Condominium"), a residential condominium located at Street, New York, NY. On December 21, 2009, the Father and another son, , purchased Unit 3505 in the Condominium. You have represented that each son is occupying his respective unit (the "Sons' Units"). The Father participated in the purchase and is in title as a co-owner of each of the Sons' Units for financing purposes. You have also stated that on or about December 30, 2010, , the Father's wife and the mother of the couple's above-named sons, (the "Mother") was the sole purchaser of Unit 3102 in the Condominium (the "Mother's Unit"). You have further represented that the Mother and the Father will occupy the Mother's Unit, though only the Mother will hold title, and there was no plan to purchase the Mother's unit at the time of the purchases of the Son's Units. The seller of the Mother's Unit and the other units was the Condominium's sponsor. You have further stated that the Mother paid an amount of RPTT determined using the higher rate schedule applicable to bulk sales.¹

ISSUE

Whether the sale and conveyance of the Mother's Unit to the Mother would be deemed to be part of a "bulk sale" transaction, including the conveyances of the Son's Units, triggering the higher rate schedule of the RPTT, or whether the RPTT's lower rate schedule for the conveyance of an individual condominium unit should apply?

CONCLUSION

The sale and conveyance of the Mother's Unit to the Mother would not be deemed to be part of a bulk sale transaction triggering the RPTT's higher rate schedule. Therefore, the RPTT's lower rate schedule would apply.

¹ No ruling is sought regarding the applicable rate schedule on the transfers of the Sons' Units in 2009.

DISCUSSION

Code section 11-2102 imposes the RPTT on any deed conveying an interest in real property or any instrument or transaction transferring a controlling economic interest in real property when the consideration exceeds \$25,000. The RPTT rate schedule for the conveyance of a one, two or three family house or an individual condominium unit is 1 percent of consideration if the consideration is \$500,000 or less and 1.425 percent of consideration if the consideration is greater than \$500,000. New York City Administrative Code (the "Code") § 11-2012(a)(9)(i). For all other conveyances, the Code imposes a higher RPTT rate schedule: 1.425 percent of consideration if the consideration is \$500,000 or less and 2.625 percent of consideration if the consideration is greater than \$500,000. Code § 11-2012(a)(9)(ii). The same two rate schedules are applicable to the transfers of economic interests in real property, including shares in a cooperative apartment building. *See* Code § 11-2012(b)(1)(B).

In 2000, the Department of Finance ("Finance") issued Finance Memorandum ("FM") 00-6 regarding the bulk sale of condominium units and cooperative apartments. *See* FM 00-6 (June 19, 2000). In that FM, Finance stated that the higher RPTT rate schedule was applicable to a bulk sale transaction in which "a single grantor transfers more than one cooperative apartment or residential condominium unit to a single grantee." The FM 00-6 did not set forth any particular time frame during which the single grantor's transfer of two or more single condominium units or cooperative apartments to the single grantee would be aggregated to be considered a bulk sale transaction. Instead, the Department of Finance ("Finance") will, as a matter of practice, look at the time between transfers and the other facts and circumstances to determine if the multiple transfers should be treated as a bulk sale transaction subject to the higher rate.

Here, the facts and circumstances suggest that the conveyance to the Mother was not part of a bulk sale transaction. With respect to the Son's Units, each son is occupying his respective Unit. The Father participated in the purchase and is in title as a co-owner of each of the Sons' Units for financing purposes. The Mother holds sole title to the Mother's Unit, and she and the Father will occupy that Unit. The Condominium's sponsor conveyed the Mother's Unit to the Mother a little more than a year after the conveyance of the second of the Sons' Units. The Mother does not hold any title to the Son's Units. Hence, the Sons' Units have different grantees than the Mother's Unit. Further, the Condominium sponsor conveyed the Sons Unit's at least a year before conveyance of the Mother's Unit to the Mother. Moreover, the fact that each individual unit is occupied by a separate grantee, and the fact that the Father's co-ownership of each of the Sons' Units was for financing purposes, are further evidence that the conveyance of the Mother's Unit was not part of a bulk sale transaction triggering the RPTT's higher rate schedule. Therefore, the lower rate schedule for the conveyance of an individual condominium unit is applicable.

The Department reserves the right to verify the information submitted, and to modify its opinion in the event the facts prove to be different than those represented.

Very truly yours,

Beth E. Goldman
General Counsel