



April 22, 2011

Re: Request for Letter Ruling
N.Y.C. Real Property Transfer Tax

FLR No: 10-4914

Dear:

This responds to your request dated November 18, 2010, on behalf of the (the "Taxpayer"), for a ruling regarding the New York City Real Property Transfer Tax ("RPTT") rate applicable to the conveyance of (the "Property").

FACTS

The facts presented are as follows:

The Taxpayer is the owner of record of the Property. The Property consists of one building, which is four stories high. In 1975, the premises were altered and an amended Certificate of Occupancy obtained to permit the owner to use the ground floor as an offices. The Department of Finance has classified the Property as Building Class A4, "City Residence one Family," and as Tax Class 1, "residential properties of up to 3 units." Prior to its sale, the Property was used as a second residence by [the grantors] which owned the Property. You have represented that the office was added to the Property by a prior owner and that [the grantors] never used the office for business purposes. In a telephone conversation on January 5, 2011, you stated that the office occupies less than 10% of the approximate gross square footage of the Property.

ISSUE

You have requested a ruling as to whether the Taxpayer's 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 1.425 % if the consideration is more than \$500,000. Code §11-2102(a)(9)(i). For all other types of conveyances, the tax rate is 2.625% where the consideration is more than \$500,000. 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% 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 all one, two and three family homes, including those “used in part for nonresidential purposes but which are used primarily for residential purposes,” subject to certain exceptions not relevant here. 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 A4 (City residence one family) is consistent with the tax classification. In the absence of information suggesting the Department’s real property classification is incorrect, that classification is controlling for RPTT purposes. As a result, the presence of an office on the ground floor occupying less than 10% of the approximate gross square footage does not disqualify the Taxpayer from applying the reduced rate of 1.425 % when calculating the RPTT due upon the conveyance of the Property.

The Department reserves the right to verify the facts submitted.

Very truly yours,

Beth E. Goldman
General Counsel

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