



June 3, 2011

Re: Request for Ruling
Real Property Transfer Tax
Hypothetical
FLR-104909-021

Dear :

This letter is in response to your request for a ruling dated May 17, 2010, regarding the application of the New York City Real Property Transfer Tax ("RPTT") to the hypothetical transaction described below. Additional information was received on or about August 2, September 30, October 4, December 10, and December 16, 2010, and January 3, March 16, March 23, and March 29, 2011.

FACTS

The hypothetical facts you have presented are as follows:

The hypothetical transaction is the sale of real property (the "Property") to provide subsidized housing to the Purchaser. The Property can be a house or building with one or more dwelling units or an apartment in a house or building with one or more dwelling units. The Purchaser must meet certain income and other qualifications to be eligible to purchase the Property. In the transaction, the Purchaser pays an amount (hereinafter the "Purchaser's Payment Amount") to the seller of the Property (the "Seller"). In addition to the Purchaser's Payment Amount, one or more agencies or entities affiliated with New York City, New York State or the federal government pays an amount (the "Subsidy Amount") either to the Seller or to third parties in connection with the purchase of the Property.

As part of the transaction, the Purchaser must comply with certain obligations set forth in contractual documents typically referred to as the "Subsidy Documents." A portion of the Subsidy Amount is typically described as a grant to the Purchaser (the "Grant"). Obligations that the Purchaser may have with respect to the Grant are not recorded in the form of a mortgage or otherwise. However, the Purchaser may be required to repay all or part of the Grant in the event the Purchaser fails to comply with the obligations set forth in the Subsidy Documents.

The remainder of the Subsidy Amount is typically described as the "Public Subsidy." The Purchaser's obligations under the Subsidy Documents with respect to the Public Subsidy are secured in the form of an Enforcement Mortgage on the Property, which is recorded. The Public Subsidy is usually forgivable over a period of years during the term of the Enforcement Mortgage (the "Designated Period"), if

the Purchaser complies with the obligations set forth in the Subsidy Documents. Among other things, the Purchaser's obligations under the Subsidy Documents include the requirement that the Purchaser live in the Property as a primary residence for a certain number of years. At the end of the designated period, if the Purchaser has complied with the obligations in the Subsidy Documents, and the Public Subsidy is completely forgiven, the Enforcement Mortgage is cancelled and the Property becomes free of the Enforcement Mortgage.

ISSUE

Whether the entire Subsidy Amount or any part thereof must be included in the consideration subject to the RPTT on the transfer of the Property to the Purchaser?

CONCLUSION

The entire Subsidy Amount must be included in the consideration subject to the RPTT on the transfer of the Property to the Purchaser.

DISCUSSION

New York City Administrative Code (the "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 imposed is based on the amount of consideration for the transfer of real property or an economic interest therein. See Code sections 11-2102(a) and 2102(b). Title 19 of the Rules of the City of New York ("19 RCNY") section 23-02 defines "consideration" as the "price actually paid or required to be paid for real property or an economic interest therein, without deduction for mortgages, liens, or encumbrances, whether or not expressed in the deed or instrument and whether paid or required to be paid by money, property or other thing of value." Under section 23-02, consideration "also includes the cancellation or discharge of an indebtedness or obligation."

Based on the above definition, the entire Subsidy Amount should be included in the consideration for the transfer of the property. There is no question that both the Grant and the Public Subsidy, which together make up the Subsidy Amount, are paid or required to be paid in connection with the conveyance of the Property. The fact they are paid by a third party does not take these amounts outside the definition of consideration. Furthermore, that the Purchaser may be relieved of various obligations does not alter this conclusion. If the Purchaser meets its obligations under the Subsidy Documents, the Public Subsidy will be forgiven, the Enforcement Mortgage securing it will be cancelled and the Grant will not have to be repaid. However, the fact that the Purchaser is forgiven for the Public Subsidy and Grant does not change the fact that they were part of the consideration paid to the grantor.

That the Grant and the Public Subsidy are paid by governmental entities also does not alter this conclusion. The City, State and federal governments are themselves exempt from the RPTT on conveyances of deeds to them, but nothing in the exemption provisions set forth in Code section 11-2106 would exclude the Subsidy Amount from the consideration subject to the RPTT on the conveyance of the property to a nongovernmental party. Accordingly, the entire Subsidy Amount is includable in the consideration subject to the RPTT on the transfer of the Property to the Purchaser.

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 the hypothetical facts represented.

Very truly yours,

Beth Goldman
General Counsel

JM:jm