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Re: Request for Ruling
Real Property Transfer Tax
FLR-15-4970-RPTT

Dear :

This letter is in response to your request for a ruling dated May 14, 2015, regarding the applicable tax rate under the New York City Real Property Transfer Tax ("RPTT") for the sale transaction described below. Additional information was received on July 1 and July 13, 2015.

FACTS

You have represented that the Marital Trust (the "Taxpayer") sold to the purchaser shares allocated to apartment units ("Units") 5 and 5R in a cooperative apartment building located in Manhattan. Units 5 and 5R have been physically connected through an internal hallway since the settlor of the trust that is the Taxpayer, acquired these Apartments in 1972. This internal hallway is accessible only from these two Units. The Taxpayer's settlor and her husband lived in the combined Units as a single apartment. The cooperative's managing agent issues one common maintenance bill for the combined Units which have only one kitchen. The combined Units are commonly referred to as Unit 5 and are referenced as such in the contract of Sale between the Taxpayer and the purchaser.

ISSUE

Whether the Taxpayer's sale of the above-described cooperative apartment units to the purchaser would be treated as the sale of an individual cooperative apartment so that the lower RPTT rate schedule, as provided in section 11-2102(b)(1)(B)(i) of the Administrative Code of the City of New York (the "Code"), applies.

CONCLUSION

We have determined, under the facts and circumstances presented, the sale of the above-described cooperative apartment units is the sale of an individual cooperative apartment subject to the lower tax rate schedule under Code section 11-2102(b)(1)(B)(i).

DISCUSSION

Section 11-2102 of 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. Code section 11-2102(b)(1)(B)(i) imposes a special lower rate for transfers of economic interests in “a one, two or three-family house, an individual cooperative apartment, an individual residential condominium” and certain other individual dwelling units. The RPTT rate for these transfers is 1 percent of the consideration if the consideration is \$500,000 or less, and 1.425 percent of the consideration if the consideration is more than \$500,000. Transfers of economic interests in real property, such as shares in a cooperative housing corporation, that do not qualify for this special lower rate, are subject to an RPTT rate of 1.425 percent of the consideration if the consideration is \$500,000 or less, and 2.625 percent of the consideration if the consideration is more than \$500,000. Code §11-2102(b)(1)(B)(ii).

Whether a sale is the sale of an individual cooperative apartment, subject to the lower rate schedule, or is the sale of multiple apartments (a “bulk sale”), subject to the higher rate schedule, will depend on the facts and circumstances of the particular situation. Finance Memorandum 00-6REV (revised 9/8/2011). In *Matter of Gruber*, TAT (E) 2003-7 (RP); TAT (E) 2003-8 (RP); TAT 2003-9 (RP), the taxpayer purchased three contiguous condominium apartments, which the sponsor had separated with temporary walls, with the full intent of combining the three apartments into one single apartment unit. Reasoning the taxpayer had acquired the property rights consistent with using the three apartments as a single condominium apartment unit, the New York City Tax Appeals Tribunal (the “Tribunal”) concluded that the lower rate schedule applied. Clearly, under the Tribunal’s *Gruber* decision, the conveyance of condominium units that have already been physically combined should be treated as the conveyance of an individual condominium unit. A similar principle should apply in the context of the sale of cooperative apartments. Code section 11-2102(a)(9), which imposes the RPTT on the conveyances of deeds, provides the same rate schedule that Code section 11-2102(b)(1)(B) provides for transfers of economic interests in real property, and is for all relevant purposes substantially the same as Code section 11-2102(b)(1)(B).

Here, the two cooperative apartment Units 5 and 5R are physically combined and connected through an internal hallway which is only accessible from these Units. Further, these Units have been used as a single apartment for over 40 years. Accordingly, based on the above facts and representations, the sale of these apartment Units should be treated as the sale of an individual cooperative apartment subject to the lower tax rate schedule under Code section 11-2102(b)(1)(B)(i).

The Department reserves the right to verify the information submitted. Please advise the Department of any material change in the facts presented.

Sincerely,

Diana Beinart
General Counsel

JM:jm