



Beth Goldman
Deputy Commissioner
Legal Affairs
GoldmanBeth@Finance.nyc.gov

345 Adams Street
3rd Floor
Brooklyn, New York 11201

+1 718 403-4908 tel
+1 718 403-6287 fax

September 3, 2013

Re: Request for Ruling
Real Property Transfer Tax
FLR-13-4940-RPTT

Dear:

This letter is in response to your request for a ruling dated April 18, 2013, regarding the applicable tax rate under the New York City Real Property Transfer Tax (“RPTT”) for the transaction described below. Additional information was received on April 23, May 7, June 3 and July 23 and July 31, 2013.

FACTS

You have represented that you and your wife (the “Taxpayers”) have contracted to sell to purchasers the shares allocated to apartments in a cooperative apartment building located in Manhattan. Apartments have long been combined into one apartment unit denominated as Apartment. Apartments were connected through an internal vestibule in 1993. This internal vestibule is accessible only to these apartments. The cooperative’s Board of Directors has included this internal vestibule in the assigned shares of stock and Proprietary Lease for apartment. The Certificate of Occupancy (the “C of O”) for apartment has been amended to reflect this connection to apartment. With this connection, the Taxpayers have lived in the two apartments as one combined space since 1993 (collectively, the “Combined Apartments”).

ISSUE

Whether the Taxpayers’ sale of the Combined Apartments to the purchasers would be treated as the sale of an individual cooperative apartment such 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, that the sale of the Combined Apartments 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 transfer of an individual cooperative apartment, subject to the lower rate schedule, or is the transfer 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 that 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. Thus, 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 Combined Apartments are physically combined and connected through an internal vestibule which is part of Apartment and which is only accessible to those apartments. Further, the Combined Apartments have been used as a single apartment for approximately 20 years. Accordingly, based on the above facts and representations, the sale of these apartments should



constitute 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.

Very truly yours,

Beth E. Goldman
General Counsel

JM:jm