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Diana Beinart
General Counsel/Deputy Commissioner

July 30, 2018

RE: Request for Ruling
Real Property Transfer Tax
FLR-16-4980-RPTT

Dear Mr.

This letter is in response to your request for a ruling dated February 14, 2017, 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 March 30 and 31, May 11 and 25, July 7, August 28, October 3, and December 14, 2017 and January 18, February 1 and 21, April 17, May 3 and 31, and July 3, 2018.

FACTS

You have represented that, in December 2016, your clients (the Sellers) sold the shares assigned to two adjacent apartment units, apartments 17A and 17B, to a sole individual purchaser (the Purchaser) in a cooperative apartment building located in Manhattan. The apartments were not physically connected in any way prior to the sale. In June 2014, the Sellers, who already owned the shares to Apartment 17A, bought the shares to Apartment 17B with the intent to combine it with apartment 17A. At that time, the Cooperative’s then President indicated the Cooperative’s Board of Directors would look favorably on such a combination, but that the Sellers would have to submit a formal application including construction plans before the Board could approve the combination of the apartments. The sellers took no further action to obtain approval of the combination. Subsequently, the Sellers sublet each apartment to a different subtenant.

The Purchaser bought the apartments with the intent to physically combine them into one combined apartment unit. The Purchaser informed a member of the Cooperative’s Board of Directors of her intention and the Board member indicated that the Board would be amenable to such a combination, provided the Purchaser complied with the Cooperative’s procedures for alterations. The Sellers sold the shares to the apartments to the Purchaser in one closing.

Following the sale, in or about May 2017, the Purchaser submitted an application for the combination with the related architectural plans. In or about early October 2017, the Board approved the plans for the combination. In or about December 2017, the Cooperative sold shares to the Purchaser representing a portion of a common hallway of the Cooperative to be included in the combination.¹ In January, 2018, the Purchaser's architect submitted the plans for the combination to the New York City Buildings Department of for their approval. In February 2018, the Buildings Department approved the combination plans. On or about July 2, 2018, demolition work necessary to combine the apartments commenced. The combination work is expected to take about six months to complete.

ISSUE

Whether the Taxpayer's sale of the shares assigned to above-described cooperative apartments 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 shares assigned to the above-described cooperative 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).

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

¹ Inasmuch as no request has been made with respect to the application of the Real Property Transfer Tax to transaction involving the sale of shares assigned to the a portion of Cooperative's the common hallway to the purchaser, that transaction is not part of this Letter Ruling.

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 for purposes of Code section 11-2102(a)(9). 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 Purchaser bought the shares assigned to the cooperative apartments with the intent to combine them into one apartment unit. To this end, the Purchaser discussed the combination with a member of the cooperative’s Board prior to the closing. She subsequently submitted an application with architectural plans to the Cooperative’s Board for approval of the combination, and the board approved the combination. Further, the Buildings Department has approved her architect’s plans for the combination. Demolition work necessary to effect the combination has now commenced. 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). This conclusion is based on the assumption that the combination will be completed in accordance with the approved plans.

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