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Diana Beinart  
General Counsel/Deputy Commissioner

November 29, 2018

**RE:** Request for Ruling  
Real Property Transfer Tax  
FLR-18-4991

Dear Mr

This is in response to your request dated August 31, 2018 for a ruling regarding the New York City Real Property Transfer Tax (“RPTT”) rate applicable to the conveyance of the property located at XXXXXXXXXX, New York (the “Property”).

### **FACTS**

The facts presented by the Taxpayer are as follows:

The Property consists of one three-story building with a cellar. The building is in Tax Class 1 and is classified as Building Code S2 (“primarily family with one store or office”) on the City’s 2018-2019 final assessment roll. The upper two floors are residential units and the ground floor is a commercial space that has been unoccupied since December 1999. The cellar has never been used for commercial purposes. Taxpayer calculates that the square footage of the building is 4,160 square feet and that the commercial space represents less than a third of the total square footage of the building.

### **ISSUES**

Whether the transfer of the Property qualifies for the lower residential tax rate of 1.425 percent applicable to one, two, or three family homes?

### **CONCLUSION**

We have determined, under the facts and circumstances presented, that the tax rate applicable to the conveyance of the Property is 1.425 percent.

### **DISCUSSION**

Under the New York City Administrative Code (the “Code”) the RPTT is imposed 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 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 percent if the consideration is more than \$500,000. Code §11-2102(a)(9)(i). For all other types of conveyances where the consideration is more than \$500,000, the tax rate is 2.62 percent.

Based on the facts presented, we have determined that the tax rate applicable to the conveyance is 1.425 percent 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 one, two, and three family homes, including those that are “used in part for nonresidential purposes but which are used primarily for residential purposes,” subject to certain exceptions that are not applicable to the facts presented. *See* 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 S2 (primarily two family with one store or office) is consistent with the tax classification. In the absence of information suggesting the Department’s classification of the Property as Class 1 is incorrect, that classification is controlling for RPTT purposes. *See In the Matter of the Petition of Mohammed F. Fokhor*, TAT (H) 08-14 (RP) (April 27, 2010) quoting FLR #034805-021. As a result the presence of an unoccupied commercial space representing less than a third of the approximate gross square footage of the building does not prevent the use of the a reduced rate of 1.425 percent when calculating the RPTT due upon the conveyance of the Property.

The Department reserves the right to verify the facts submitted and to modify its decision accordingly.

Sincerely,

Diana Beinart  
General Counsel

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