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Diana Beinart  
General Counsel/Deputy Commissioner

July 30, 2018

**RE:**

New York City Real Property Transfer Tax  
FLR: 18-4989

Dear Mr.:

This is in response to your request for a ruling regarding the appropriate tax rate to be used when calculating the New York City Real Property Transfer Tax (“RPTT”) in the case of the transfer of two individual residential condominium units (“Unit 1” and “Unit 2” or in the aggregate the “Units”) under the circumstances described below.

**FACTS:**

Pursuant to two separate Contracts of Sale, Unit 1 and Unit 2 (which are noncontiguous, separate residential condominium units in the same building) are being sold by the same Sponsor/Seller and purchased by two different legal entities. The consideration for each of the units is over \$1 million.

The purchaser of Unit 1 is a newly formed limited liability company (“LLC A”) with its own employee identification number (“EIN”). LLC A’s sole member is Trust A which similarly has its own EIN.

The purchaser of Unit 2 is a newly formed limited liability company (“LLC B”) with its own EIN (separate and distinct from the above entities) . LLC B’s sole member is Trust B which similarly has its own EIN.

The sole beneficiary of Trust A and Trust B is Individual 1.

**ISSUE:**

You are requesting a ruling as to whether the RPTT tax rate of 1.425 percent applicable to individual residential condominium units applies under these facts and circumstances. You have also asked if,

in the event we determine that the rate for individual residential condominium units does not apply, whether the result would change if the closings for the two units take place four months apart.

**CONCLUSION:**

Based on the facts presented we conclude that the sale of the two individual residential condominium units by the same seller to two LLCs, the ultimate beneficial ownership of which rests in the same individual is a bulk sale subject to the higher tax rate of 2.625 percent under the RPTT.

**DISCUSSION:**

The RPTT applies to each deed conveying an interest in New York City real property when the consideration for the real property interest exceeds \$25,000. Section 2102(a) of the New York City Administrative Code (the "Code"). The tax rate depends on the amount of consideration and the type of property transferred. For "conveyances of one, two or three-family houses and individual residential condominium units" Code section 11-2102a(9)(i) imposes a 1.0 percent rate where the consideration does not exceed \$500,000 and a 1.425 percent rate where the consideration is over \$500,000 (the "Individual Rate"). For "all other conveyances," Code section 11-2102.a(9)(ii) imposes a 1.425 percent rate where the consideration does not exceed \$500,000 and a 2.625 percent rate where the consideration is over \$500,000 (the "Non-individual Rate").

Individual residential condominium units. In Finance Memorandum 00-6REV ("FM 00-6"), Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units, September 8, 2011, the Department of Finance (the "Department") addressed the issue of when the Individual Rate applies to a transaction in which a single grantor transfers more than one individual cooperative apartment or condominium unit to a single grantee. Such transactions, described as bulk sales, are generally taxed at the Non-individual Rate because those transfers are not transfers of an "individual" apartment or unit under Code section 11-2101.a(9). In order to determine whether a bulk sale has taken place the Department will look to the facts and circumstances of the specific case.

Where there is a clear intent to combine two contiguous apartments or in cases involving the purchase of a small, ancillary condominium unit that could only be held in conjunction with a main condominium unit purchased at the same time by the same purchaser, the transfer has been treated as the sale of an individual unit. See Matter of Gruber TAT (E) 03-7 (RP) et. al. (September 12, 2006); Matter of Cambridge Leasing, TAT(E) 03-11(RP)(September 12, 2006); Matter of Rosenblum TAT(E)01-31 (RP)(September 12, 2006).

Under the facts you have presented, there is no contention that the units are intrinsically related so that they should be considered to be one unit. Rather the Units are noncontiguous, separate units bought under separate contracts by two different LLCs which are owned by two different trusts. However, both these trusts have the same individual as their beneficiary. Therefore, the beneficial ownership of both apartments will rest with the same individual. Based on these facts and circumstances, it is our opinion that the transfer of these apartments by the seller constitutes a bulk sale and that the Non-individual Rate will apply. This determination is not altered if the closings for

the two units are conducted four months apart since the plan clearly was to have one individual receive the beneficial ownership of both units.

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

Very truly yours,

Diana Beinart  
General Counsel

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