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Diana Beinart  
General Counsel/Deputy Commissioner

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XXXXXXXXXX  
XXXXXXXXXX

**RE:** Request for Ruling  
NYC Real Property Transfer Tax  
FLR 18-4994

Dear XXXXXXX:

This is in response to your request for a ruling on behalf of XXXXXXX (the "Taxpayer") as to whether the transfer of the property located at XXXXXXX in Brooklyn (Block: XXX Lot: XXX) (the "Property") qualifies for the lower residential tax rate of 1.425 percent applicable to one, two or three family homes (the "residential rate") under the New York City Real Property Transfer Tax ("RPTT").

**FACTS:**

The facts presented are as follows:

The Taxpayer is a limited liability company and the owner of record of the Property by deed dated XXXXXXX. XXXXXXX is the sole member of the Taxpayer having originally purchased the Property on XXXXXXX before transferring it to the Taxpayer in XXXX at the request of her lender. The Property consists of one three-story building with a below grade cellar. The cellar is unfinished and not used. The ground floor is used as an office and storage for the Taxpayer and has been used as such since the renovation was completed and a Certificate of Occupancy was obtained on XXXXXXX. The boiler, electric and water meters and similar equipment are also located on the ground floor. The two floors above the ground floor have been combined into one apartment. The Building Class of the property is S1 (primarily one family with one store or office) and its Tax Class is 1.

**ISSUE:**

You have requested a ruling that the Taxpayer's conveyance of the Property is subject to the rate of 1.425 percent applicable to the conveyance of a one, two or three family house where the consideration is more than \$500,000.

**DISCUSSION:**

Section 11-2102 of the Administrative Code of the City of New York (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. For a 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, the rate is 2.625 percent where the consideration is more than \$500,000. Code §11-2102(a)(9)(ii).

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 that are "used in part for nonresidential purposes but which are used primarily for residential purposes," subject to certain exceptions not relevant here. See New York Real Property Tax Law §1802.1. The tax classification reflects that the Property is used for residential purposes. The building Code S1 (primarily 1 family with 1 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. The presence of an office on the ground floor is consistent with this classification and does not prevent the use 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 modify its decision accordingly.

Very truly yours,

Diana Beinart  
General Counsel

CGS:cgs