



Department of Finance

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Diana Beinart
General Counsel/Deputy Commissioner

July 9, 2019

RE: Request for Ruling
Real Property Transfer Tax
FLR 19-4998

Dear

This is in response to your request dated May 15, 2019 for a ruling regarding the New York City Real Property Transfer Tax (“RPTT”) rate applicable to the conveyance of the property located at XXXXXXXX (the “Property”). You have submitted the following documents with your request (1) NYC Property Final Assessment Roll 2018-2019; (2) NYC Transfer Tax Return; and (3) Copies of Finance Letter Rulings 15-4975, 09-4899-021, and 064845-021.

FACTS

The facts presented by the Taxpayer are as follows:

The Property consists of one building with four floors and a cellar. The building is listed as Tax Class 1 and Building Code S1 (“primarily one family with one store or office”) on the City’s 2018-2019 Final Assessment Roll. The property was purchased in 1962 by XXXXXXXX. The ground floor was used as a medical office by the property owner from 1962-2003. In 2003, the property owner’s son rented the space for his nursing business. The property owner and his family occupied the remaining floors as a single residence during his ownership until his passing in 2017. Taxpayer calculates that the square footage of the building is 4,550 square feet and that the commercial space represents one-fifth of the total square footage of the building. The property was sold by XXXXXXXX on October 25, 2018 and an RPTT return was filed calculating the tax due using 2.625 percent as the tax rate.

ISSUE

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

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 2.625 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 as Class 1. Class 1 real property includes one, two, and three family houses, 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 S1 (primarily one 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 a commercial space representing approximately one-fifth of the gross square footage of the building does not prevent the use of the reduced transfer tax 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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