

STATEMENT OF AUDIT PROCEDURE

Procedure for Determining the Correct RPTT Rate When the Type of Property Claimed on an RPTT Return Differs from the Type of Property in DOF's Records.

Background

Conveyances of one-, two-, or three-family houses, individual residential condominium units, and individual residential cooperative apartments are subject to the New York City Real Property Transfer Tax ("RPTT") at a rate lower than the rate for other transfers.

Occasionally, a taxpayer may file an RPTT return using the lower rate, but the Department of Finance's ("DOF") Property Tax records indicate that the property was not eligible for the lower rate on the date of the transfer.¹ This discrepancy can occur for various reasons, such as when an owner has converted an ineligible property (for example, a multi-unit property) to an eligible property (for example, a single-family home) but has failed to contact DOF about the renovation. In general, unless there is an error in DOF's records and the actual configuration of the property matches that on the filed RPTT return, the transfer would not qualify for the lower rate.

Scope

This Statement of Audit Procedure provides guidance to auditors and taxpayers about how to determine the correct rate when there is a conflict between the type of property claimed on the RPTT return and the type of property configuration indicated in DOF's Property Tax records. These procedures also apply when an RPTT filer requests a refund that includes a claim that the transfer in question qualified for the lower rate.

Procedure

All transfers of New York City real property are taxable under the RPTT if the consideration for the transfer is more than \$25,000, unless the transfer is otherwise exempt for reasons not relevant to this Statement of Audit Procedure. Two rate schedules apply.

Currently, transfers of one-, two-, or three-family houses, individual residential condominium units, and individual cooperative apartments are taxed at a rate of 1% of consideration if the consideration is \$500,000

¹ Eligible property configurations include most residential property of up to three units (including family homes and small stores or offices with one or two apartments attached), individual residential cooperative apartments, and individual residential condominium units.

or less, and at a rate of 1.425% of consideration if the consideration exceeds \$500,000. NYC Administrative Code Section 11-2102. All other transfers subject to the RPTT are taxed at the higher rate of 1.425% of consideration for transfers where the consideration is \$500,000 or less, and at a rate of 2.625% of consideration for transfers where the consideration exceeds \$500,000. NYC Administrative Code Section 11-2102.

Auditors and taxpayers should be aware that the RPTT rate depends upon the configuration of the property on the date of the transfer.

If, during the course of an audit of a particular transfer, an auditor determines that the filer has used the lower rate applicable to one-, two-, or three-family houses or individual residential cooperative or condominium apartments, but DOF's Property Tax records indicate an ineligible configuration, additional investigation is required to determine the actual configuration of the property on the date of the transfer.

The auditor should contact the grantor and the grantee in writing and identify the inconsistency. This communication should include a request for any documents or records that support the filing position that the **actual, physical configuration of the property at the time of the transfer fits within one of the categories that qualify for the lower rate.**

Examples of supporting documentation include:

- A Certificate of Occupancy from the Department of Buildings ("DOB") that was in effect at the time of the transfer
- Notices of Violation from DOB for being out of compliance with the Certificate of Occupancy, and Notices showing that any violations were fixed before the transfer
- A request to change the use permitted under the Certificate of Occupancy
- Permits for construction work to change the configuration
- Requests for DOB inspections of construction work
- Photographs showing the configuration at the time of the transfer
- Insurance policies designating the property as residential rather than commercial at the time of the transfer
- Requests to DOF to reclassify the property
- Documentation of any subsequent changes to the DOF Property Tax classification

The auditor should be aware that for a property to qualify for the lower rate, any conversion from an ineligible to an eligible configuration must have been completed by the date of the transfer.

The auditor should also contact the Property Division to obtain additional information about how and when the building class and tax class were determined by DOF.

Making the Rate Determination

The auditor should be mindful that whether a transfer qualifies under the RPTT statute for the lower rate is a question of fact. Rate determinations are based upon the best information and documentation available to show whether the property was a one-, two-, or three-family house or individual residential condominium apartment on the date of the transfer.

In most instances, the actual configuration of the property, and whether the lower rate applies, will be clear after an examination of the materials received in response to DOF's request for additional information. However, the burden of proving that the property qualified for the lower rate on the date of the transfer rests with the taxpayer. Therefore, in the absence of information showing that relevant DOF Property Tax records are incorrect, DOF's records control for RPTT purposes.