

FINANCE MEMORANDUM

Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units

This Finance Memorandum articulates the Department's position on the treatment of bulk transfers of cooperative apartments and residential condominium units under the New York City Real Property Transfer Tax, (the "RPTT").

Under the RPTT, transfers of real property are taxable provided the consideration for the transfer is more than \$25,000 unless the transfer is otherwise exempt for reasons not relevant to this Finance Memorandum. Two rate schedules apply. A transfer of an individual cooperative apartment or individual residential condominium unit is taxed at 1 percent of the consideration if the consideration is \$500,000 or less and at 1.425 percent of the consideration if the consideration is over \$500,000. The rates for all other transfers are 1.425 percent if the consideration is \$500,000 or less and 2.625 percent if the consideration exceeds \$500,000. The Department of Finance applies the higher rate schedule to a transaction where a single grantor transfers more than one cooperative apartment or residential condominium unit to a single grantee. These transactions generally are referred to as bulk sales.

In order to determine whether a bulk sale has taken place the Department will look to the facts and circumstances of the specific case. Three 2006 Tax Appeals Tribunal decisions provide guidance on the issue of what constitutes a bulk sale. In *The Matter of Cambridge Leasing*, TAT (E) 2003-11 (RP), the taxpayer bought three units in a condominium. Two of the units were already combined and the third was a "Maid's Room" on a lower floor. The "Maid's Room" can only be purchased by a condominium unit owner. The Tribunal ruled that this was not a bulk sale, so the lower RPTT rate applied. In *The Matter of Rosenblum*, TAT (E) 2001-31 (RP), the taxpayer purchased a condominium unit along with a "Suite Unit", a wine cellar unit and a storage unit. Even though this Suite Unit was equipped with a kitchenette and bathroom the Tribunal ruled that this was not a bulk sale. Once again, none of these additional units could be purchased by anyone except for a condominium unit owner. Therefore, the lower RPTT applied. Finally, in *The Matter of Gruber*, TAT (E) 2003-7 (RP); TAT (E) 2003-8 (RP); TAT (E) 2003-9 (RP), the taxpayer purchased all 3 units on a completely unfinished floor of a condominium building. The taxpayer intended to combine these units into one residence. However, in order to get a Certificate of Occupancy the sponsor had to put up temporary walls and meet certain minimum requirements such as, installing a bathroom and stove in each unit. The Tribunal reasoned that the taxpayer acquired rights consistent with using the entire floor as a single unit. Therefore, even though the units were not combined before the sale the Tribunal ruled that there was no bulk sale and that the lower RPTT rate applied. Because the facts and circumstances differ in each case there may be some uncertainty as to whether the reasoning in the three Tribunal decisions applies to a particular set of facts. In such a case the Department recommends that you request a Letter Ruling to get the Department's opinion.

The lower rate structure applies also to transfers of leasehold interests in individual cooperative apartments and residential condominium units, however, the treatment of such leaseholds is beyond the scope of this Finance Memorandum. In the case of a bulk sale of cooperative apartments or residential condominium units, the higher rate schedule is applied to the consideration for the transaction as follows:

Because condominium units are transferred by deeds, in a bulk sale of condominium units, the higher rate schedule is applied to the consideration for each deed separately if the units are transferred by separate deeds, provided each deed represents not less than a single condominium unit or tax lot. The Department will accept the taxpayer's apportionment of the consideration for the bulk sale to each deed provided that apportionment reasonably reflects the relative values of the units transferred. In contrast, because cooperative apartments are not transferred by deed, in a bulk transfer of cooperative apartments, the higher rate schedule will be applied to the amount of consideration for the entire transfer and not separately to the consideration for each apartment.

The Department of Finance has issued this Finance Memorandum for the purpose of advising taxpayers and tax professionals of, and explaining the Department's current position and procedures with respect to, the issue addressed so that they may act accordingly. Finance Memoranda are advisory in nature and are merely explanatory. Finance Memoranda are not declaratory rulings or rules of the Department of Finance and do not have legal force or effect, do not set precedent and are not binding on taxpayers.