

**THE CITY OF NEW YORK
DEPARTMENT OF FINANCE**

NOTICE OF RULEMAKING

Pursuant to the power vested in me as Commissioner of Finance by sections 389(b) and 1043 of the New York City Charter, and section 11-537(a) of Administrative Code of the City of New York, I hereby promulgate the within amendments to the Rules Relating to the Real Property Transfer Tax. These amendments were published in proposed form on January 11, 2008. A hearing for public comment was held on February 11, 2008.

/s/Martha E. Stark
Commissioner of Finance

NOTE: New Matter is underlined; matter to be deleted is in [brackets]

Amendments to Rules Relating to the New York City Real Property Transfer Tax

Section 1. Paragraph (9) of subdivision (b) of section 23-03 of title 19 of the Rules of the City of New York is amended to read as follows:

(9) at the rate of 1% of the consideration with respect to conveyances of 1-2-, or 3-family houses or individual condominium units (other than grants, assignments or surrenders of leasehold interests as hereafter provided) made on or after August 1, 1989 where the consideration is \$500,000 or less, and at the rate of 1.425% of the consideration with respect to such conveyances made on or after August 1, 1989 where the consideration is more than \$500,000.

For purposes of this paragraph (9), an individual condominium unit that is used for residential purposes shall be presumed to be a residential condominium unit, unless such residential use is de minimis; provided, however, an individual condominium unit that is required to be used in whole or part as a hotel room by the contract of sale or other document determining the conditions under which such condominium is transferred shall be presumed not to be a residential condominium unit.

§ 2. Paragraph (10) of subdivision (b) of such section 23-03 is amended by adding a new illustration (iii) to read as follows:

Illustration (iii): X purchases a condominium unit in a building consisting of 150 separate condominium units. Each unit consists of bedroom(s), sitting areas or rooms and kitchen facilities. Under the terms of sale, X (or X's designee) is entitled to occupy the unit for their own purposes for a limited period in each calendar year. When not occupied by the purchaser (or their designee), the condominium unit must be made available for rental as a transient hotel accommodation. The Certificate of Occupancy for floors containing the condominium units will state "hotel." The cost of X's condominium unit is \$1 million. The tax due will be calculated as follows: 2.625% of \$1,000,000 for a tax due of \$26, 250. The unit is not considered an individual residential condominium unit for purposes of calculating the tax.

BASIS AND PURPOSE OF AMENDMENTS

These amendments affect the portion of the Rules Relating to the New York City Real Property Transfer Tax governing the tax rate applicable to the transfer of an individual residential condominium. When the rule that is being amended was promulgated the Department of Finance was unaware of any condominium units being marketed for sale specifically for use as hotel accommodations. As a result the rule did not explicitly exclude condominium units intended for use as hotel accommodations from the definition of residential condominium units. It is the position of the Department of Finance that this type of hotel use is commercial in nature and is not what was intended by the term “residential condominium unit.” These amendments are intended to explicitly clarify this interpretation and accommodate currently existing uses of condominium units. If additional new uses of condominium units arise, the Department of Finance will revisit this language for possible amendment.