

## **NYC Issues Transfer Tax Ruling on Sale of Multiple Condo Units**

*By: Ezra Dyckman and Charles S. Nelson*

Whether property is considered “residential real property” can have important New York State and City transfer tax consequences. First, the New York City real property transfer tax is imposed at the rate of 1.425% on conveyances of “one, two or three family houses, and individual residential condominium units” (or 1% if the consideration is \$500,000 or less) and at the rate of 2.625% for most other types of property (or 1.425% if the consideration is \$500,000 or less).

Second, New York State imposes an additional real estate transfer tax on the transfer of a “one, two, or three family-house, an individual condominium unit, or a cooperative apartment unit” where the consideration is \$1 million or more (colloquially referred to as the “mansion tax”). The tax is generally imposed at the rate of 1%, although higher graduated rates apply to properties located in New York City. Thus, the sale of a single residential condominium unit would result in higher New York State transfer tax but lower New York City transfer tax when compared to the sale of commercial property of comparable value.

Although both the New York State and New York City statutes use almost identical language, the two jurisdictions take conflicting positions with regard to bulk sales of residential condominium units. New York State takes the position that a sale of multiple residential condominium units by a single grantor to a single grantee is subject to the mansion tax (although each condominium unit is considered separately in determining the applicable rate and whether the \$1 million threshold has been exceeded).

However, New York City takes the position that such a sale is not a transfer of an “individual condominium unit” and thus is subject to tax at the higher tax rates. The combination of these conflicting interpretations leaves a bulk sale of condominium units with the worst of both worlds, subjecting such a sale to the highest combined transfer tax rate of any type of property in New York City.

In a private ruling recently issued by the New York City Department of Finance, a taxpayer was able to obtain the benefit of the lower New York City transfer tax rates on a sale of multiple condominium units. In the ruling (FLR No. 22-5022), the taxpayer owned a residential condominium unit in a building in Manhattan.

The taxpayer also owned two “studio units” in the same building. The condominium’s by-laws provided that only the owner of a regular condominium unit could own a studio unit, and that a studio unit could only be occupied by an owner’s employees, family members, or nonpaying guests who stayed for no more than three months. If a studio unit’s owner leased his regular condominium unit, he was generally

required to also lease his studio units to the same tenant for the same term or to lease the studio units to another condominium owner.

Based on these facts, the New York City Department of Finance ruled that the sale of the taxpayer's residential condominium unit together with his two studio units constituted the sale of an individual residential condominium unit and was therefore subject to the lower transfer tax rates. The ruling stated that the studio units constituted an integral part of the taxpayer's regular condominium unit, because the use of the studio units was substantially restricted and tied to the occupancy of the regular condominium unit. The court cited as precedent an earlier New York City Tax Appeals Tribunal case that reached the same result on similar facts.

The result of the ruling is sensible and appears correct given the particular facts and circumstances of that case. However, the ruling does nothing to negate New York City's position that a sale of two or more condominium units is ordinarily subject to the higher tax rates. The combination of New York City's position that such a sale is taxable at the higher rates and New York State's position that such a sale is subject to mansion tax is clearly unfair, because the two positions interpret the similar language inconsistently. Nevertheless, absent litigation, it seems unlikely that either jurisdiction will change its position.

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