

**NYC REAL PROPERTY TRANSFER TAX
AND MORTGAGE RECORDING TAX
REFUND ON TRANSFER OF MULTIPLE UNITS**

Both buying and selling real estate in New York always necessitates careful consideration of tax implications of the transaction. In addition to New York State transfer tax, the city of New York imposes additional tax on the transfer of real property, known as NYC Real Property Transfer Tax (“RPTT”) and Mortgage Recording Tax (“MRT”), if the transaction involves a mortgage.

Both the RPTT and the MRT rates depend not only on the amount of purchase price but also on the type of property transferred. The NYC Department of Finance applies a higher rate to a transaction where a single grantor transfers more than one residential unit to a single grantee. Such transactions are known as “bulk sales”.

However, many buyers and sellers don’t realize that they might be eligible for a lower rate if the units were combined into a single residence at the time of sale or were purchased with the intention to combine them in the future. Very few people know that they are eligible for a tax refund if the application is timely and properly made to the NYC Department of Finance.

RPTT RATES

The New York City Real Property Transfer Tax (“RPTT”) is imposed on transfer of residential condominium or cooperative units valued at \$25,000 or more. The tax is usually paid as part of closing costs at the sale or transfer of property.

If residential property¹ is being transferred, the city imposes a tax of 1% if the value is \$500,000 or less, and 1.425% if the value is over \$500,000

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If residential property² is being transferred, the city imposes a tax of 1% if the value is \$500,000 or less, and 1.425% if the value is over \$500,000. All other transfers, including transfer of two or more units in a condominium or cooperative building involve a higher “bulk rate”. If the value is \$500,000 or less, the rate is 2.625%. Such “bulk rate” will apply even if each unit is conveyed by a separate deed.

The RPTT is usually paid by the seller unless otherwise negotiated. In a new construction, where the apartments are bought from the sponsor/developer, the RPTT is usually paid by the buyer.

MRT RATES

A New York City Mortgage Recording Tax is charged for mortgages recorded on property in the five boroughs: Queens, Brooklyn, Manhattan, Bronx and Staten Island. The correct Mortgage Recording Tax information and documents must be provided at the time of recording.

The MRT rate depends on the amount of the mortgage and the type of property transferred. All mortgages in the amount of less than \$500,000 are taxed at the rate of 2.05%, whether individual or bulk. However, once the amount of mortgage exceeds \$500,000, the MRT rate differed depending on the type of property transferred. When the property covered by such mortgage is an individual unit, then the rate is 2.175%. If more than one unit is involved – the NYC Department of Finance applies a higher rate of 2.8%.

BASIS FOR REFUND

Sellers and buyers of real property can be eligible for a refund from the NYC Department of State on the payment of higher “bulk rate” on the transfer of two or more units or mortgage recording if such units can be considered a single residence.

In 2000, the NYC Department of Finance issued a Memorandum clarifying that a transfer of units which had been combined into a single residence would not be considered a “bulk sale” if the facts and circumstances indicate that the units have been physically combined:

“The department will examine all of the applicable facts and circumstances in determining whether two or more apartments or units have been physically combined. The issuance of a

¹ Residential property transfer means a transfer of an economic interest in a one- to three-family house, an individual residential condominium unit, or an individual cooperative apartment.

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revised certificate of occupancy, a letter of completion from the Buildings Department or a revised tax lot designation reflecting the joining of two or more apartments or units will be acceptable evidence of such a combination. However, the absence of any of these documents will not be determinative. The fact that two or more units or apartments will be combined following the transfer will not be sufficient to permit the transaction to be treated as a transfer of an individual apartment or individual residential condominium unit taxable at the lower rates.”³

While issuance of a revised certificate of occupancy or a revised tax lot designations would be the easiest way to prove a lower rate should apply, those documents are not always obtainable, and the NYC Department of Finance had previously issued a refund without such documentation.

Pursuant to several Letter Rulings, Finance Memorandums, and decisions of the Tax Appeals Tribunal, the city is obligated to provide refund in certain cases where the units were not even physically combined at the time of sale, but the buyer intended to combine them after the purchase. The courts have previously directed a refund even when (1) several units were sold pursuant to separate contracts of sale; (2) the units were not physically combined; and/or (3) the units were not adjacent, if the transfer involved ancillary space like maid rooms, cellars, storage rooms, etc.

Proper application for refund involves review of all pertinent documents⁴ and presentation to the NYC Department of Finance and the tax authorities of all documentation, factors and arguments weighing in favor of the lower rate.

Application for refund must be brought within one year of the payment of taxes⁵.

PRACTICAL CONSIDERATIONS

Of course, the best way to ensure that lower tax rate applies is careful guidance of experienced legal counsel during the transaction and preparation of all necessary documentation to show that the residence will be used as single residence before the transfer. However, from a practical standpoint, any transfer of more than one unit, even with proper documentation, will most likely involve the initial payment of a higher “bulk rate”. This is so because all the necessary transfer forms for the

³ NYC Department of Finance Letter Ruling Memorandum 00-6 ("Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units")

⁴ Including, contract of sale, offering plan, declaration/bylaws, transaction deal sheet/report, bank appraisal documents, if any, architectural plans, department of building documents, applications and approvals, etc.

⁵ Pursuant to the Rules of the City of New York, “the Commissioner of Finance will refund or credit, without interest, any tax ... erroneously... collected or paid if the application to the Commissioner of Finance for such refund shall be made within one year from the payment thereof”. 19 R.C.N.Y. § 23-14.

transaction are prepared and generated through the Automated City Register Information System (ACRIS), and are devised so that the rate of taxation is automatically bumped to a higher “bulk rate” when filings for two units are created. Even if the ACRIS forms were somehow created at the lower rate, it is likely that the NYC Department of Finance clerks would reject the filing.

Thus, buyers and sellers of real estate often pay the higher rate and immediately file necessary paperwork for refund. With that said, even if the documentation for refund was not prepared at the time of transfer, the buyer/seller might still be eligible for refund if proper application is made to the NYC Department of Finance.

At Feinstein Partners, we have extensive experience representing clients who overpaid the RPTT or MRT to the city, and have successfully secured refunds for such clients.

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Among our clients are individuals, families, start-ups and established businesses, real estate investors and developers, private funds. With over a decade of experience and a strong professional network, we can get the job done quickly and efficiently, be it devising and implementing a strategy for your business or vigorously defending your rights in any dispute.

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