

CAMBRIDGE LEASING CORPORATION - DETERMINATION - 09/28/04

In the Matter of CAMBRIDGE LEASING CORPORATION  
TAT(H) 03-11(RP) - DETERMINATION

NEW YORK CITY TAX APPEALS TRIBUNAL  
ADMINISTRATIVE LAW JUDGE DIVISION

REAL PROPERTY TRANSFER TAX – THE SALE OF MULTIPLE INDIVIDUAL RESIDENTIAL CONDOMINIUM UNITS ARE SUBJECT TO THE LOWER TAX RATE ACCORDED THE SALE OF CERTAIN RESIDENTIAL PROPERTIES. EVEN IF SUCH SALES ARE SUBJECT TO THE HIGHER TAX RATE, THE SALE OF TWO COMBINED RESIDENTIAL CONDOMINIUM UNITS AND A NON-CONTIGUOUS MAID'S ROOM CONSTITUED THE SALE OF A SINGLE RESIDENCE AND NOT A "BULK SALE" AS DESCRIBED IN FINANCE MEMORANDUM 00-6.  
SEPTEMBER 28, 2004

**NEW YORK CITY TAX APPEALS TRIBUNAL  
ADMINISTRATIVE LAW JUDGE DIVISION**

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**In the Matter of the Petition  
of  
CAMBRIDGE LEASING CORPORATION**

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**DETERMINATION  
TAT(H) 03-11(RP)**

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Gombinski, C.A.L.J.:

Petitioner, Cambridge Leasing Corporation, filed a petition for hearing dated May 23, 2003 (the "Petition") with the New York City ("City") Tax Appeals Tribunal requesting a redetermination of a deficiency of City Real Property Transfer Tax ("RPTT") under Chapter 21 of Title 11 of the City Administrative Code ("Code") in connection with the transfer on January 19, 2000 of real property located at 500 Park Avenue, New York, New York.

The parties consented, pursuant to 20 RCNY §1-09(f) of the Tribunal's Rules of Practice and Procedure, to have the controversy determined on submission without a hearing. The parties submitted a stipulation of facts dated April 1, 2004 with accompanying exhibits. Each party thereafter submitted a brief and a reply brief. The final brief was received on July 27, 2004. Petitioner was represented by Jack Wilk, Esq. of Siller Wilk LLP. The Commissioner of Finance (the "Commissioner" or "Respondent") was represented by Robert Firestone, Esq., and George P. Lynch, Esq., Assistant Corporation Counsels.

## ISSUE

Whether the transfer by a single deed of three residential condominium units (two combined units and a non-contiguous maid's room) is taxable under the lower RPTT rate applicable to conveyances of individual residential condominium units.

## FINDINGS OF FACT

1. On January 19, 2000 Petitioner sold three condominium units (the "Property") in the Park Tower Condominium (the "Condominium") located at 500 Park Avenue, New York, New York (the "Building") to East End Investments, Inc. for \$3,275,000 (the "Sales Price"). The Property was sold pursuant to a single Contract of Sale dated November 22, 1999 (the "Sale") and was transferred through a single deed. Two of the three condominium units, Apartments 24B and 25B (the "Combined Apartments"), are located, respectively, on the 24<sup>th</sup> and 25<sup>th</sup> floors of the Building and were physically combined. The third condominium unit, Maids Room Number 4 (the "Maids Room"), is located on the 14<sup>th</sup> floor of the Building.

2. The size of the Combined Apartments is approximately 3,500 square feet. The size of the Maid's Room is approximately 200 square feet, consisting of a 129 square foot main room, a walk-in-closet and a bathroom. The square footage of the Maid's Room is approximately 5.7% of the total square footage of the Property.

3. For City Real Property Tax purposes, Apartment 24B is designated as Block 1294, Lot 1031; Apartment 25B is designated as Block 1294, Lot 1033; and the Maid's Room is designated as Block

1294, Lot 1006. The building class for all three units is "R4" - a residential condominium unit in an elevator building.<sup>1</sup> On January 1, 2000, the assessed value of Apartment 24B was \$180,858; the assessed value of Apartment 25B was \$98,039; and the assessed value of the Maid's Room was \$17,874. The assessed value of the Maid's Room as of January 1, 2000 (nineteen days before the Sale) was approximately 6% of the total assessed value of the Property (\$296,771) on that date.

4. The percentage interest of the common elements of the Condominium is 1.15909% for Apartment 24B; 0.81769 for Apartment 25B; and 0.11455% for the Maid's Room. The Maid's Room's percentage interest in the common elements of the Condominium is approximately 5.5% of the Property's percentage interest in the common elements of the Condominium (2.09%).

5. There are four "maid's room" condominium units in the Building, each of which: (a) is located on the 14<sup>th</sup> floor; (b) cannot contain any cooking or kitchen facilities; (c) must be purchased in conjunction with the purchase or ownership of a residential unit; and (d) must be used exclusively as a residence for a maid or other housekeeping employee of a residential unit owner or bona fide tenant thereof. Offering Plan, Part I, §§D3 and P2; Condominium By-laws ("By-laws") Article 6, §6.14-1.1. A residential unit owner is permitted, at any time, to sell or convey a maid's room condominium unit to a residential unit owner in the Condominium and to lease a maid's room condominium unit to a residential unit owner in the Condominium or a bona fide tenant thereof. Offering Plan, Part I, §P1. Housekeeping employees of residential unit holders are required to use the service entrance

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<sup>1</sup> Official notice is taken of the City Real Property Tax information on the City's website.

of the Building and any designated service elevator. By-laws Article 14, §§13 and 14.

6. Petitioner filed an RPTT return dated January 19, 2000 (the "RPTT Return") with respect to the Sale in which it calculated and paid RPPT on the Sales Price using the 1.425% tax rate applicable to sales of individual residential condominium units where the consideration is greater than \$500,000.

7. The City Department of Finance (the "Department") audited the RPTT Return and re-computed the tax using the 2.625% tax rate applicable to sales other than those of one-, two- or three-family houses or individual residential condominium units where the consideration is greater than \$500,000. As a result of that audit, the Department issued a Notice of Determination, dated June 26, 2002, which asserted that Petitioner owed, with respect to the Sale, additional RPTT of \$39,300 and interest of \$8,378.98.

8. Petitioner filed a Request for a Conciliation Conference (the "Request"), dated July 10, 2002, with the Department. On July 22, 2002 Petitioner paid the Department, under protest, the \$47,678.98 of additional RPTT that was asserted in the Notice of Determination.

9. After receiving a Conciliation Decision, dated March 27, 2003, which failed to resolve the matter, Petitioner filed the Petition which seeks a redetermination of the deficiency asserted in the Notice of Determination and requests a refund of the \$47,678.98 of RPTT and interest that Petitioner paid to the Department under protest after the filing of the Request for a Conciliation Conference.

## STATEMENT OF POSITIONS

The Commissioner asserts that the sale of multiple residential condominium units from the same seller to the same buyer (a transaction described as a "bulk sale" in Finance Memorandum 00-6 (June 19, 2000)) does not constitute the conveyance of an individual residential condominium unit and thus must be taxed at the higher tax rate provided under Code §11-2102.a(9)(ii). Otherwise, she asserts, the use of the word "individual" in Code §11-2102.a(9)(i) would have no meaning. The Commissioner acknowledges that the two units consisting of the Combined Apartments should be treated as an individual residential condominium unit because they have been physically combined. However, she asserts that the Sale is a Bulk Sale because the Maid's Room (unlike the two units in the Combined Apartments) is a separate and non-contiguous residential condominium unit which is not an appurtenance to the Combined Apartments (as would be a separate storage unit).<sup>2</sup>

Petitioner, in turn, asserts that the Legislature intended to tax only commercial, nonresidential, transactions at the higher tax rate. Petitioner argues that depending on the use and intent of the owners, non-contiguous dwelling spaces can be deemed to be part of an individual residential condominium unit - particularly since the limited availability of space in the City can cause facilities of a single residence to be located on multiple floors. Petitioner argues that the Maid's Room should be considered analogous to a

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<sup>2</sup> The Commissioner relies on the residential nature of a maid's room to distinguish it from other remote, but related, condominium units that cannot be used for residential purposes which she asserts are treated as appurtenances under Real Property Law §339-3.14, which defines unit as ". . . a part of the property intended for any type of use or uses . . . and may include such appurtenances as garage and other parking space, storage room, balcony, terrace and patio . . ."

separate parking space or storage room. Petitioner also claims that subjecting the entire Sale to RPTT at the higher tax rate because of the Maid's Room is unfair since that unit comprises only a small fraction (5% to 6%) of the total Property sold.

### CONCLUSIONS OF LAW

Code §11-2102.a imposes the RPTT "on each deed at the time of delivery by a grantor to a grantee when the consideration for the real property and any improvement thereon (whether or not included in the same deed) exceeds twenty-five thousand dollars." The rate of RPTT applicable with respect to the Sale depends upon whether the Sale is governed by Code §11-2102.a(9)(i) or (ii):

[W]ith respect to conveyances made on or after August first, nineteen hundred eighty-nine . . . the tax shall be at the following rates:

(i) at the rate of one percent of the consideration for conveyances of one, two or three-family houses and **individual** residential condominium **units** where the consideration is five hundred thousand dollars or less, and at the rate of one and four hundred twenty-five thousandths of one percent of the consideration for such conveyances where the consideration is more than five hundred thousand dollars [the "Lower Tax Rate"], and

(ii) at the rate of one and four hundred and twenty-five thousandths of one percent of the consideration with respect to all other conveyances where the consideration is five hundred thousand dollars or less, and at the rate of two and six hundred twenty-five thousandths of one percent where the consideration for such conveyances is more than five hundred thousand dollars [the "Higher Tax Rate"]. (Emphasis added.)

The Commissioner asserts that, under the plain and unequivocal language of Code §11-2102.a(9)(i), the sale of multiple residential condominium units from the same seller to the same buyer (a "Bulk

Sale") is subject to the Higher Tax Rate. Yet the Commissioner also states that the Department's position is that: "Neither the Code nor the Rules of the City of New York ('RCNY') specifically addresses the proper rate of tax to be applied in the case of a transaction involving the transfer of multiple residential condominium units." FLR 00-4761-021 (August 23, 2000).<sup>3</sup> Neither assertion is correct. Code §11-2102.a(9)(i) was drafted in the plural and specifically provides that "**conveyances** of . . . individual residential condominium **units**" (i.e., a Bulk Sale) are taxed at the Lower Tax Rate. (Emphasis added.) Had the Legislature intended the Lower Tax Rate to apply only to the sale of a single residential property, they would never have drafted the statute in the plural to provide that the Lower Tax Rate applied to conveyances of individual condominium units.<sup>4</sup>

Moreover, the legislative history does not indicate that the Legislature ever intended Bulk Sales to be taxed at the Higher Tax Rate. To the contrary, the legislative history indicates that all conveyances of residential property are to be taxed at the Lower Tax Rate. See, Report of the Legal Services Division to the New York City Council Committee of Finance, Entitled "In relation to increasing the rates of the real property transfer tax imposed by chapter 21 title 11 of such code," Int. No. 1274-A (June 30, 1989) (emphasis added): "This bill would increase the tax rates for transfers of **residential properties** valued at \$500,000 or more to 1.425% and to 2.625% of the consideration for transfers of **non-**

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<sup>3</sup> In her brief, the Commissioner cites this language and indicates that FLR 00-4761-021 is one of the rulings in which the Department's position has been enunciated.

<sup>4</sup> *Contra*, New York State Real Estate Transfer Tax §1402(a)(A), which is written in the singular. Also note that Finance Memorandum 00-6, *supra*, describes the statutory language of Code §11-2102.a(9)(i) as if it were written in the singular and Respondent's brief, on p. 15, misquotes Code §11-2102.a(9)(i) to make it read in the singular.



**residential properties** valued at \$500,000 or more, effective August 1, 1989.”

To determine what property constitutes residential property, the Legislature did not adopt a “use” test; thus avoiding the potentially difficult issue of how to categorize property that is used for both personal residential purposes (occupancy by the owner) and commercial purposes (the generation of rental income).<sup>5</sup> Instead, the Legislature promulgated a bright-line test under which certain specifically enumerated smaller types of residential use properties (one, two or three-family houses and individual residential condominium units) are *per se* treated as residential property subject to the Lower Tax Rate. Code §11-2102.a(9)(i). Thus, the remaining types of residential use properties (e.g., greater than three-family houses and apartment buildings), which being larger are more likely to be commercial in nature, are treated as non-residential property and are taxed, under Code §11-2102.a(9)(ii), at the Higher Tax Rate.<sup>6</sup>

The Commissioner nevertheless claims that the statute plainly and unequivocally taxes Bulk Sales at the Higher Tax Rate because every word in a statute must be interpreted to be given meaning and the word “individual” could have no meaning in Code §11-2102.a(9)(i) other than to exclude Bulk Sales from the Lower Tax Rate. To that end, she cites People v. Tran, 80 N.Y.2d 170,176

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<sup>5</sup> That the Legislature knew how to impose a use requirement when it so desired is indicated in §1443.2 of the now repealed New York State Real Property Gains Tax, which limited an exemption from that tax to that portion of the real property that was actually occupied and used by the transferor as his residence.

<sup>6</sup> Since certain properties *per se* are treated as residential property under Code §11-2102.a(9)(i), with the seller’s use (i.e., whether the property was held for investment or personal use) being immaterial, there is no apparent reason why the Lower Tax Rate should not apply with regard to the sale of multiple residential properties between the same seller and buyer. Nor has the Commissioner asserted any such reason.

(1992); People v. Ethloff, 283 N.Y. 309, 315 (1940); and McKinney's Statutes §231.<sup>7</sup> The Commissioner even concedes that absent the use of the word "individual," the Lower Tax Rate would be applicable with respect to Bulk Sales.<sup>8</sup>

The rule of statutory construction contained in McKinney's Statutes §231 is not as immutable as Respondent suggests. Instead, it is conditioned on practicality, stating that: "In the construction of a statute, meaning and effect should be given to all its language, **if possible**, and words are not to be rejected as superfluous when it is **practicable** to give to each a distinct and separate meaning." *Id.* (emphasis added). As the plural language of Code §11-2102.a(9)(i) (which must also be given meaning under the above rule of statutory construction) specifically provides that **conveyances** of individual condominium units are taxed at the Lower Tax Rate, a result in keeping with the legislative intent, it is neither practical nor possible to read the word "individual" as excluding Bulk Sales from being taxed at the Lower Tax Rate.

Moreover, Respondent's assumption that the word "individual" must modify the number of residential condominium units to have meaning is incorrect. First, the word "individual" when used as an adjective, modifies the nature rather than, as Respondent suggests, the quantity of the subject. See, Webster's Third International Dictionary, Unabridged (1993), p. 1152, which defines the word

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<sup>7</sup> An Administrative Law Judge of this Division agreed with this interpretation in Matter of Emerson Unitrust and Mark Emerson, TAT(H) 99-82(RP) *et al.*, (September 30, 2002). That determination, however, involved cooperative apartments, and not condominium units, and was affirmed by the Appeals Division of this Tribunal, in TAT(E) 99-82 (July 23, 2003), solely on other grounds.

<sup>8</sup> Because the Commissioner relies solely on the word "individual" to assert that Bulk Sales of condominiums are subject to the Higher Tax Rate, a necessary corollary to that argument is that the conveyance of several one family houses in a single transaction must be taxed at the Lower Tax Rate since the word "individual" does not modify one, two or three-family houses.

"individual" as "not divisible: of one essence or nature." Had the Legislature intended to modify the number of apartments transferred, at the very least, it would have used a word which more appropriately modifies quantity, like "single," and would have drafted the provision in the singular.

Second, the word "individual" can be interpreted to have meaning without contravening its common definition, the statutory language of Code §11-2102.a(9)(i), or the Legislative intent to tax residential real property transfers at the Lower Tax Rate. This can be done by reading the word "individual" to restrict the Lower Tax Rate to transfers of condominium units that contain only a single residence. By illustration, in a "condop," a building is separated into two or more units - a residential unit and one or more commercial units - each of which receives a condominium unit deed. See, Siegler, Techniques for the 80/20 Test of IRC §216, NYLJ (May 5, 1999). The residential condominium unit (which contains numerous individual residences) is then transferred to a cooperative housing corporation. This structure is designed to insure compliance with the requirement in Internal Revenue Code §216 that to pass-through deductible interest and real property taxes to its shareholders, a cooperative housing corporation cannot receive more than 20% of its income from sources other than tenant-shareholders. See, *Id.*; Rev. Rul 78-31, 1978-1 C.B. 76; PLR 8919061 (February 15, 1989).

As the residential unit of a condop contains a number of individual residences, the transfer of such a unit to a cooperative housing corporation is similar to the transfer of an apartment building to a cooperative housing corporation. As indicated above, the Legislature treated only smaller residential use properties as being subject to the Lower Tax Rate. Thus, interpreting the word

"individual" to tax the transfer of a residential condominium unit containing multiple residences at the Higher Tax Rate, not only provides meaning to that word, but also creates parity in the application of the statute. For, in such instance, the transfer of several individual residential condominium units (like the transfer of several single family houses)<sup>9</sup> would be subject to the Lower Tax Rate, whereas the transfer of the residential condominium unit of a Condop (like the transfer of its functional equivalent - an apartment building) would be subject to the Higher Tax Rate.<sup>10</sup>

It is further noted that Code §11-2101.b(1)(A), which was adopted in 1989, seven years after the term "individual condominium units" was first promulgated, imposes the Lower Tax Rate on transfers of economic interests in a one, two and three-family house, an **individual cooperative apartment**, an individual residential condominium unit, and certain individual dwelling units. The use of the word "individual" in modifying a cooperative "apartment" (vis-a-vis "unit") arguably is redundant. However, the legislative history of that provision indicates that its purpose was to "establish a uniform rule and eliminate an inequity between owners of private homes and condominium units who have always been subject to the transfer tax, and owners of cooperative units who . . . are not subject, in most cases, to the real property transfer tax." Report of the Legal Services Division to the New York City Council Committee of Finance, entitled "In relation to extending the coverage of the real property transfer tax imposed by chapter 21 of title 11 of such code to certain additional transfers

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<sup>9</sup> See, fn. 8, *supra*.

<sup>10</sup> Under Respondent's assertion that the word "individual" serves only to tax multiple transfers of condominium units at the Higher Tax Rate, the transfer of the residential unit of a condop would be taxed at the Lower Tax Rate since only a single residential condominium unit would be transferred.

of shares of stock or interests in a real estate cooperative," Int. No. 1273 (June 28, 1989). Thus the Legislature may merely have copied the term "individual," which had previously modified the term "condominium units," and applied it with regard to cooperative apartments in order to insure parity in the treatment of cooperative apartments and condominium units.

Moreover, redundancy alone is hardly a reason to interpret meaning to a statute that the legislature did not intend. As the commentary to McKinney's Statutes §231 states:

It is recognized . . . that words are frequently used in a statute which are not necessary, but are to some extent superfluous. It is frequently the case that certain words may be left out of a statute without changing its meaning; and at the same time the meaning of the Legislature is more easily and certainly ascertained if they are retained. The same idea is frequently repeated in different words; but, although different language may be used, it is not necessary in all cases to attach a different meaning to it. The fact, in other words, that a construction renders a statute tautological is no objection to it.

McKinney's Consolidated Laws of New York Annotated, Book 1, Statutes (1971), pp. 391 and 392.

Accordingly, it is held that Bulk Sales are taxed at the Lower Tax Rate. However, for the sake of completeness, it is further found that even if Bulk Sales were excluded from the Lower Tax Rate, the Sale was not a Bulk Sale.

Respondent has acknowledged that residential condominium units that have been physically combined into a single residence (including the Combined Apartments) should be taxed at the Lower Tax Rate even though they technically constitute more than one

residential condominium unit.<sup>11</sup> The only rational justification for that interpretation is that the Commissioner correctly believed that the Legislature intended premises used as a single residence to be subject to the Lower Tax Rate. The Maid's Room, however, was not a separate residence but an integral part of the same residence as the Combined Apartments.

While it is of evidentiary value that the Maid's Room was not physically combined with the Combined Apartments, the lack of such combination is not, in itself, determinative of whether the three units comprising the Property constituted a single residence. Nor is it determinative that a maid's room is not separately listed as an appurtenance under the Condominium Law (as are non-contiguous storerooms and parking spaces). The Maid's Room had no individual value, purpose or use other than to be part of one of the residences in the Building. It could not be sold or rented to anyone who did not otherwise have a residence in the Building. The Maid's room did not even have a kitchen.

At the time of Sale, the Maid's Room was restricted to serving as the living space for the housekeeping employee of the Combined Apartments. It thus constituted a separate, yet integral, part of the same residence as the Combined Apartments. Consequently, the sale of the inexorably linked, and far lesser valued, Maid's Room did not transform the conveyance of the Combined Apartments (which Respondent acknowledges is a single residence) into a Bulk Sale.<sup>12</sup>

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<sup>11</sup> Finance Memorandum 00-6, *supra*, provides: "The Department will not treat a transfer of adjacent cooperative apartments or residential condominium units that have been physically combined into a single residence as a bulk sale. The Department will treat such a transfer as a transfer of an individual apartment or unit taxable under the lower rate schedule. The Department will examine all of the applicable facts and circumstances in determining whether two or more apartments or units have been physically combined."

<sup>12</sup> All other arguments raised by Respondent have been considered and have been found to be unpersuasive.

**ACCORDINGLY, IT IS CONCLUDED THAT** the sale of multiple individual residential condominium units (a Bulk Sale) is a sale of residential property subject to the Lower Tax Rate. It is further concluded that even if Bulk Sales were subject to the Higher Tax Rate, the Sale was not a Bulk Sale since the Maid's Room was part of the same residence as the Combined Apartments.

Therefore, the Petition of Cambridge Leasing Corporation is granted and the Notice of Determination, dated June 26, 2002, is cancelled. Petitioner therefore is entitled to a refund of the amount paid under protest.

DATED: September 28, 2004  
New York, New York

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STEVEN J. GOMBINSKI  
Chief Administrative Law Judge