

Friday Fast Facts

October 20th, 2023

New York State Department of Taxation & Finance Opinion of Revocable License

A recent development in New York State's Tax Law has raised concerns for Condominium owners. The NYS Department of Taxation and Finance (the "Department") recently issued an Opinion that License Agreements for a parking space and/or storage space constitutes a conveyance of an interest(s) in real property under NYS Tax Law Article 31. According to the Department, a parking or storage space license is considered real property under NYS Tax Law Article 31, Section 1401(c).

As a result, the transfer of both the condominium unit and ancillary spaces would constitute a single conveyance. This means the consideration for those property interests should be aggregated for transfer tax determination purposes. Hence, the amount paid for the license is taxable, which may result in NYS Mansion Tax being applied, or a higher rate being applied to the aggregated sums paid. Aggregating the sums paid could also result in higher transfer taxes by increasing the total purchase price above the various thresholds for NYS transfer taxes and NYC transfer taxes in the five boroughs of New York City.

The Department further concluded that parking space and storage space licenses are considered "any other interest with the right to use ... real property," as defined in NYS Tax Law, Article 31, Section 1401(f). This definition includes "title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property."



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