April 1, 2010

Daniel B. Horwitch, Esq.
Deputy Director, Legal Services
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100 Washington St., 3rd Floor
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Dear Mr. Horwitch:

First Assistant Commissioner Louis P. Bucari has forwarded to us your e-mail dated February 19, 2010. Your e-mail pertained to the repeal of a real estate conveyance tax exemption for deeds made pursuant to a decree of the Superior Court under Conn. Gen. Stat. §49-24. See 2009 Conn. Pub. Acts 3, §114 (June Spec. Sess.), amending Conn. Gen. Stat. §12-498(a)(9). Your e-mail made reference to Conn. Agencies Regs. §12-494-1, and then inquired about the calculation of the real estate conveyance tax on foreclosure sales. This letter provides written confirmation of our discussions with you.

The fundamental question you posed to the Department is: What is the appropriate method for determining the conveyance tax on a mortgage foreclosure sale? In seeking an answer to this question, you asked the Department to confirm the application of Conn. Agencies Regs. §12-494-1. As confirmed during our discussion, Conn. Agencies Regs. §12-494-1 remains in full force and effect. As such, in the context of a mortgage foreclosure sale, you are correct in your conclusion that real estate conveyance tax applies to the following:

- the purchase price (As you correctly point out in your e-mail, this conclusion is based on the definition of "[f]ull purchase price" that is set forth in Conn. Agencies Regs. §12-494-1(a). To this end, Conn. Agencies Regs. §12-494-1(a) defines "[f]ull purchase price" to mean "money . . . paid . . . to the transferor.");
- the amount of any money due on any mortgage prior in interest to the mortgage being foreclosed, the liability of which the purchaser is assuming (As you correctly point out in your e-mail, this conclusion is based on the definition of "[f]ull purchase price" that is set forth in Conn. Agencies Regs. §12-494-1(a). To this end, Conn. Agencies Regs. §12-494-1(a)(1) defines "[f]ull purchase price" to mean and include "the fair market value of consideration other than money paid or transferred, directly or indirectly, to the transferor, whether or not expressed in the deed, instrument or other writing, and includes, but is not limited to—(1) the amount of any liability of the transferor, which liability is assumed by the transferee.");
- any outstanding taxes, condominium fees and the like (As you correctly point out in your e-mail, this conclusion is based on the definition of "[f]ull purchase price" that is set forth in Conn. Agencies Regs. §12-494-1(a). To this end, Conn.

> Agencies Regs. §12-494-1(a)(2) defines "[f]ull purchase price" to mean and include "the fair market value of consideration other than money paid or transferred, directly or indirectly, to the transferor, whether or not expressed in the deed, instrument or other writing, and includes, but is not limited to— . . .(2) the amount of any liability to which the realty is subject, but not including the amount of property tax, other municipal assessments, common expense assessments or similar charges which are not yet due and payable and which are subject to customary adjustments.").

You then provided two examples and asked us to confirm your calculation of the real estate conveyance tax. The first example provides as follows:

> A condominium carrying a $300,000 mortgage with an outstanding balance of $200,000 is foreclosed. The condominium has a fair market value of $250,000 as established by an appraisal. At auction, the condominium sells for $190,000. The conveyance tax is based on the purchase price of $190,000, plus any outstanding condominium fees and taxes.

We agree with your conclusion. We understand that, even if the condominium has a fair market value of $250,000, as is typical in a foreclosure sale, the purchase price of the property is likely to be less than its fair market value.

The second example provides as follows:

> The balance on the first $300,000 mortgage on the condominium above is current with a balance of $250,000; but a second mortgage of $100,000 is $40,000 delinquent. At auction, the condominium sells for $100,000. The conveyance tax is based on the purchase price of $100,000, the assumption of the $250,000 first mortgage, plus any outstanding condominium fees and taxes.

We agree with your conclusion. That having been said, and to confirm our prior discussion, you were uncertain whether or not the facts and figures contained in the second example represent a purely hypothetical scenario or whether they represent an actual/realistic scenario.

We hope that this response is helpful to you.

Sincerely,

Holly J. Wilson

Holly J. Wilson
Tax Attorney
Legal Division

cc: Louis P. Bucari, Jr., General Counsel
Frederick P. Clark, Director, Legal Division