MEMORANDUM

Privileged and Confidential Advice of Counsel

TO: James Leonard, Commissioner of Records

FROM: Frances Ruml Beckley, Revenue Chief Counsel
Christine T. Bak, Senior Attorney CTB
Jakob Williams, Drexel Law, Oxholm Fellow

DATE: August 2, 2019
SUBJECT: How To Determine The Realty Transfer Tax Base When Transfer is for Nominal Consideration Or For Less Than Fair Market Value

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Opinion Request: You have asked for an opinion from the Law Department for the City of Philadelphia on how to value property for realty transfer tax ("RTT") purposes when the consideration for the property is nominal or less than fair market value as set by the Office of Property Assessment ("OPA").

Answer: Where the consideration is for below market value, the value for RTT purposes is the computed value. Computed value is the OPA value for the property (which may be viewed at property.phila.gov), multiplied by the common level ratio factor for Philadelphia. As of July 31, 2019, the common level ratio factor for Philadelphia County is 1.01. Please be advised that the ratio factor will change over time.

Discussion: The Phila. Code §19-1402 (14)(b) states that computed value for "transactions without consideration or for consideration less than the actual monetary worth of the real estate. . . [is] the actual monetary worth of the real estate. . . ." The term "actual monetary worth" is further defined by the City's RTT regulation §301 as "[t]he amount determined by multiplying the assessed value of the realty for local real estate tax purposes by the common level ratio factor of Philadelphia."

Requiring that the RTT is imposed on computed value rather than on the low consideration is further supported by Pennsylvania law. The Commonwealth and Philadelphia have nearly identical definitions of value for RTT. The Commonwealth has also concluded that where a property is transferred for less than fair market value, RTT is imposed on the assessment value of the property multiplied by the common level ratio factor for the county in which the property is located. *See 427 Iven LLC and McCurdy Holdings LLC*, BF&R Docket Nos. 1316036 and 1316035 (January 30, 2015).

In plain language, the above referenced ordinance requires that the RTT is imposed on the OPA value multiplied by 1.01 when the sales price of the property is below fair market value. Essentially, taxpayers must report the higher of either calculated value or sales price.

Example 1

Sale at below market value: OPA has assessed a property for real estate tax purposes at \$180,000.00. If the property, a house, is sold to a nonexempt family buyer for the cash price of \$100,000.00, then the property has been sold below fair market value. In this case, the RTT is calculated on the computed value of the property which is \$181,800. (\$180,000 OPA assessment multiplied by 1.01).

Example 2

Sale at fair market value: OPA has assessed the property at \$180,000.00. If the property is sold to a third-party buyer for the price of \$220,000.00, then the house has been sold for fair market value. In this case, the RTT due is calculated on the consideration paid of \$220,000.00.