

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-86 (18) C
Corporation Tax
August 29, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C860513A

On May 13, 1986, a Petition for Advisory Opinion was received from 246 W. 38th St. Tenants Corp., c/o Smetana Associates Property, Inc., 321 Fifth Avenue, New York, New York 10016.

The issue raised is whether Petitioner, pursuant to section 210.1(a)(2) of Article 9-A of the Tax Law, may calculate its New York State franchise tax liability under the capital rate of .0004 as applicable to cooperative housing corporations.

Petitioner is a corporation operating and maintaining 15 co-op units in New York City. Its only source of income in its first year of operations consists of maintenance charges collected from the tenants and \$14 in interest income.

The units were initially offered and are currently available for commercial occupancy. However, Petitioner would like to amend its pertinent documents (including leases, etc.) to enable each owner to obtain a revised certificate of occupancy permitting use of the unit for dwelling purposes. Any such changes would be made pursuant to proper zoning laws, building and housing codes, etc. In addition, Petitioner will not unreasonably withhold its consent to any improvement, alteration, etc. necessary to obtain such an amended certificate of occupancy to allow residential use.

Petitioner contends that in a recent private letter ruling, the Internal Revenue Service ruled that the issuance of stock allocated to professional apartments will not prevent qualification as a cooperative corporation. Petitioner believes the facts and circumstances of that case are the same as Petitioner's.

Section 210.1(a)(2) of the Tax Law provides, in part, that the computation of tax measured by business and investment capital "...in the case of a cooperative housing corporation as defined in the internal revenue code, ..." shall be at the applicable rate of four-tenths of a mill.

Section 216(b)(1) of the Internal Revenue Code defines the term "cooperative housing corporation" as follows:

"a corporation --

(A) having one and only one class of stock outstanding,

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred is derived from tenant-stockholders." [see also 20 NYCRR 3-1.2(b)].

Therefore, if Petitioner is a cooperative housing corporation for Federal income tax purposes pursuant to section 216(b)(1) of the Internal Revenue Code, Petitioner is a cooperative housing corporation for New York State franchise tax purposes pursuant to section 210.1(a)(2) of the Tax Law. Accordingly, if Petitioner is a cooperative housing corporation, the computation of the business corporation franchise tax measured by business and investment capital is computed at the rate of four-tenths of a mill (.0004).

DATED: August 29, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.