

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

TSB-A-86 (6) C  
Corporation Tax  
March 12, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C840917A

On September 17, 1984, a Petition for Advisory Opinion was received from Garen & Company, Suite 408, 420 Lexington Avenue, New York, New York 10170.

The issue raised is whether a condominium association organized in New York State under Article 9-B of the Real Property Law, which elects to file a regular corporate Federal income tax return, is required to file a New York State corporate tax return pursuant to Article 9-A of the Tax Law.

Petitioner represents a condominium association organized under Article 9-B of the Real Property Law. The condominium association has written articles of association but does not issue to its members certificates or other written instruments which evidence an interest in or ownership of the association. The association manages a 1118 unit development and is headed by unit homeowners. The income of the association is derived from: 1) assessments received from unit homeowners; 2) rentals of a garage, parking spaces and laundry areas; 3) interest income; 4) reimbursement of expenses from the development sponsor in excess of budgeted amounts (first two years only); and 5) monthly rentals received from tenants of commercial space owned by the condominium association. The income is used to operate the property. The excess of income over operating expenses is reserved for future capital improvements.

Subdivision one of section 209 of the Tax Law imposes a Franchise Tax on Business Corporations, as follows:

"For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, for all or any part of each of its fiscal or calendar years, every domestic or foreign corporation, except corporations specified in subdivision four of this section, shall annually pay a franchise tax, upon the basis of its entire net income, or upon such other basis as may be applicable as hereinafter provided, . . ."

The meaning of the term "corporation" is set forth in subdivision one of section 208 of the Tax Law, as follows:

"The term 'corporation' includes a joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument;..."

Further elucidation is provided by section 1-2.3 of the Business Corporation Franchise Tax Regulations, which provides, in part, that:

"(a) The term 'corporation' means an entity created as such under the laws of the United States, any state, territory or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of any of the foregoing, which provides a medium for the conducting of business and the sharing of its gains.

...

(b) The term 'corporation' includes a joint stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument. An entity conducted as a corporation is deemed to be a corporation. . . ." 20 NYCRR 1-2.3

Section 339-o of Article 9-B of the Real Property Law states that the deeds and leases of units must include "... The common interest appertaining to the unit..." 49 NYCRR 339-o. Section 339-e(5) of such law defines "common interest" as "the (i) proportionate, undivided interest in fee simple absolute, or (ii) proportionate undivided leasehold interest in the common elements appertaining to each unit, as expressed in the declaration" 49 NYCRR 339-e(5). Thus, each homeowner's interest is evidenced by a written instrument.

Section 339-m of such law states, in part, that "The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to their respective common interests.... Notwithstanding any provision of this article, profits and expenses may be specially allocated and apportioned by the board of managers in a manner different from common profits and expenses...." 49 NYCRR 339-m. Section 339-e(6) of such law defines "common profits" as "the excess of all receipts of the rents, profits and revenues from the common elements remaining after the deduction of the common expenses." 49 NYCRR 339-e(6).

Accordingly, the generation of income from rentals of a garage, parking spaces, laundry areas and commercial space owned by a homeowners association demonstrates that the association provides a medium for the conducting of business and the sharing of its gains. Thus, such condominium association presents itself as a corporation to conduct business. It is apparent from Petitioner's description of its operations that the condominium association represented by Petitioner meets the definition of a corporation for purposes of Article 9-A of the Tax Law.

This conclusion is supported by People ex rel. West Side Tennis Club v. Browne, 270 A.D. 1061, wherein the court found a tennis club taxable because "it embarked upon business activities for profit and also... was engaged in carrying on a business during the tax years." Similarly, in Rye Country Day School v. Lynch, 239 A.D. 614, it was determined that since the corporation was financially successful and had accumulated profits it was subject to the franchise tax.

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Whether a condominium association elects to file its Federal income tax return pursuant to section 528 of the Internal Revenue Code or files a regular corporate Federal income tax return has no impact on determining if such association is subject to tax under Article 9-A of the Tax Law.

Accordingly, the condominium association represented by Petitioner will be subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law, and will be required to pay an annual franchise tax upon the basis of its entire net income or upon such other basis as may be applicable. It is to be noted that, pursuant to the provisions of subdivision nine of section 208 of the Tax Law, the starting point for computing entire net income is the taxable income that is reported for Federal income tax purposes. After determining Federal taxable income, it must be adjusted as required by such subdivision nine of section 208 of the Tax Law. The condominium association represented by Petitioner will be required to file an annual corporation franchise tax return on Form CT-3 (long form) or CT-4 (short form), whichever is appropriate.

DATED: March 12, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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