

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

TSB-A-94 (3) C
Corporation Tax
January 19, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C921228A

On December 28, 1992, a Petition for Advisory Opinion was received from Robert B. Serikstad, CPA, c/o Marin & Montanye, 14 Vanderventer Avenue, Port Washington, New York 11050.

The issue raised by Petitioner, Robert B. Serikstad, CPA, is how to value the real property owned by a cooperative housing corporation as defined in section 216 of the Internal Revenue Code.

Section 210.1(b) of Article 9-A of the Tax Law provides that, for purposes of computing the capital base, in the case of a cooperative housing corporation as defined in section 216 of the Internal Revenue Code, the applicable rate is four-tenths of a mill for each dollar of the taxpayer's total business and investment capital or portion thereof allocated to New York.

Section 210.2 of the Tax Law provides that business and investment capital is determined by taking the average value of assets included therein (less certain liabilities) and for such purposes, real property is valued at fair market value.

Fair market value is defined in section 3-4.5 of the Business Corporation Franchise Tax Regulations as the price at which a willing seller, not compelled to sell, will sell and a willing purchaser, not compelled to buy, will buy. No one rule can be used to determine the fair market value of all real property. Each parcel is unique and the valuation must be fixed in accordance with the particular requirements and circumstances of a particular situation. (See Technical Services Memorandum TSB-M-85(18.1)C issued December 2, 1993, revoking Technical Services Memorandum TSB-M-85(18)C issued November 1, 1985.)

Accordingly, the determination of the fair market value of real property is a factual matter not susceptible of determination in an Advisory Opinion. An Advisory Opinion merely sets forth the applicability of pertinent statutory and regulatory provisions to a "specified set of facts." Tax Law, §171. Twenty-fourth; 20 NYCRR 2376.1(a).

Herein, for purposes of determining the fair market value of real property of a cooperative housing corporation when computing the taxable capital base, the taxpayer should look at the appropriate indicators related to the real property to determine the fair market value of such property.

DATED: January 19, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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