

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

TSB-A-96 (24) C
Corporation Tax
October 1, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C960607D

On June 7, 1996, a Petition for Advisory Opinion was received from Renaissance Condominium, 91-31 Queens Blvd. Suite 503, Elmhurst, New York 11373.

The issues raised by Petitioner, Renaissance Condominium, are (1) whether it is subject to tax under Article 9-A of the Tax Law and (2) whether Internal Revenue Ruling 70-604 is applicable for New York franchise tax purposes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is an unincorporated condominium association organized in 1989 under Article 9-B of the New York Real Property Law. The condominium comprises the land and building at 164-170 West Broadway in Long Beach, New York 11561. It comprises 65 residential units. Petitioner does not issue certificates or other written instruments evidencing ownership, nor does it issue stock.

The owner of a residential unit owns title to his or her unit and is entitled to exclusive possession to that unit. Any one unit is not subject to mortgages on any other unit and a unit owner will incur no liability if his or her neighbors fail to make payments on any mortgage affecting their units. Each unit owner has the right to vote in the election of a Board of Managers that will supervise the property and manage the affairs of the condominium. A unit owner may sell or lease his or her unit to anyone without restriction or limitation. Each unit is assessed as a separate lot for real property tax purposes.

The revenues of Petitioner are derived from assessments received from unit holders for common charges (including late fees) and interest income. No revenue is received from garages, laundry or commercial spaces. Any excess of income over operating expenses is reserved for future capital improvements.

Petitioner files form 1120-H for federal income tax purposes. Internal Revenue Ruling 70-604 provides that excess assessments by a condominium management corporation, over and above the amounts used for the operation of condominium property, that are returned to the stockholder-owners or applied to the following year's assessments are not taxable income to the corporation.

Section 209.1 of the Tax Law imposes a franchise tax on business corporations, as follows:

[f]or 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 base, or upon such other basis as may be applicable as hereinafter provided

Section 208.1 of the Tax Law provides that the term "corporation" includes an association, within the meaning of section 7701(a)(3) of the Internal Revenue Code.

For purposes of section 7701(a)(3) of the Internal Revenue Code, an association is an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than another type of organization such as a partnership or a trust.

In The Larkfield Professional Center Condo Association, Adv Op Comm T & F, February 28, 1992, TSB-A-92(4)C, it was held that where a condominium association organized pursuant to Article 9-B of the Real Property Law was unincorporated and its income consisted of only common charges and interest income from building reserve funds, the condominium association was subject to tax under Article 9-A of the Tax Law because it was an association within the meaning of section 7701(a)(3) of the Internal Revenue Code and therefore met the definition of corporation pursuant to section 208.1 of the Tax Law. The same conclusion was reached under similar circumstances in an advisory opinion issued to Condominium, Adv Op Comm T & F, December 23, 1993, TSB-A-93(22)C.

Accordingly, Petitioner is subject to the franchise tax imposed under Article 9-A of the Tax Law.

Section 208.9 of the Tax law defines entire net income as "total net income from all sources ... which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department ... except as hereinafter provided" Therefore, the taxable income reported for federal income tax purposes is the starting point for computing entire net income. After determining federal taxable income, it must be adjusted as required by section 208.9 of the Tax Law.

If a homeowners association elects to file as a homeowners association pursuant to section 528 of the Internal Revenue Code, the association's federal taxable income for purposes of section 208.9 of the Tax Law will be presumed to be the same as its taxable income as computed under section 528(d) of the Internal Revenue Code.

Accordingly, since Petitioner elects to file as a homeowners association pursuant to section 528 of the Internal Revenue Code, Petitioner's starting point for computing its entire net income pursuant to section 208.9 of the Tax Law will be its federal taxable income computed pursuant to section 528 of the Internal Revenue Code.

Excess assessments by a condominium management corporation that are not treated as gross income for federal income tax purposes pursuant to Rev Rul 70604, supra, are not included in the starting point for computing entire net income for purposes of Article 9-A of the Tax Law. Further,

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there is no modification under section 208.9 of the Tax Law that would increase Petitioner's federal taxable income for these excess assessments when computing Petitioner's entire net income.

DATED: October 1, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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