

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

TSB-A-96 (2) M
Miscellaneous Tax
November 27, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M961003A

On October 3, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from NYNEX Corporation, 1113 Westchester Avenue, White Plains, New York 10604.

The issue raised by Petitioner, NYNEX Corporation, is whether the conversions and deliveries of shares of stock related to the merger of Petitioner with a subsidiary company of Bell Atlantic Corporation are subject to the Stock Transfer Tax imposed pursuant to Article 12 of the Tax Law.

Petitioner presents the following facts. NYNEX Corporation ("Old NYNEX") and Bell Atlantic Corporation ("Bell Atlantic"), each a Delaware corporation, have entered into an Amended and Restated Agreement and Plan of Merger, dated as of April 21, 1996, as amended and restated on July 2, 1996 (the "Merger Agreement"). Pursuant to the Merger Agreement, Bell Atlantic will form, under Delaware law, a wholly-owned subsidiary (the "Merger Subsidiary"), which will be merged with and into Old NYNEX (the "Merger"). NYNEX ("New NYNEX") will survive the Merger and will become a wholly-owned subsidiary of Bell Atlantic.

Section 2.2 of the Merger Agreement provides that, as a result of the Merger, each share of Old NYNEX common stock issued and outstanding immediately before the Merger (excluding Old NYNEX stock held as treasury stock or owned by Bell Atlantic) and all rights related to such stock will "without any action on the part of any holder thereof, forthwith cease to exist and be converted into and become exchangeable" for 0.768 shares (the "Exchange Ratio") of newly issued Bell Atlantic common stock. The approval of the Merger Agreement authorizes Bell Atlantic to restate its Certificate of Incorporation to increase the total number of shares of stock that Bell Atlantic is authorized to issue. A portion of these newly authorized shares will be used in the conversion and exchange of the Old NYNEX stock.

In addition, section 2.7 of the Merger Agreement provides that no fractional shares of Bell Atlantic stock will be issued to the Old NYNEX shareholders in connection with the conversion and as a result of the Exchange Ratio, but instead, each such shareholder shall be entitled to a cash payment representing the value of any fractional share due to the shareholder (such value to be computed according to the terms of the Merger Agreement).

Finally, section 2.4 the Merger Agreement provides that, once the Merger takes place, each share of common stock of the Merger Subsidiary issued and outstanding (100 percent of which is owned by Bell Atlantic) immediately prior to the Merger and all rights related to such stock will "without any action on the part of Bell Atlantic, forthwith cease to exist and be converted into" 1,000 shares of common stock of New NYNEX, as the survivor of the Merger.

Subdivision (1) of section 270 of Article 12 of the Tax Law provides in part:

There is hereby imposed . . . a tax . . . on all sales, or agreements to sell, or memoranda of sales and all deliveries or transfers of shares or certificates of stock . . . in any domestic or foreign association, company or corporation . . . whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of sale or transfer, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to said stock, or other certificates taxable hereunder, or merely with the possession or use thereof for any purpose . . .

Subdivision (h) of section 440.1 of the Stock Transfer Tax Regulations provides as follows:

(h) The tax imposed by article 12 of the Tax Law does not apply to the original issuance of stock.

Subdivision (j) of section 440.1 of such regulations provides in part:

(j) The following are examples of transactions not subject to tax:

* * *

(2) The surrender of a single certificate for reissuance to the same stockholder of several certificates representing, in the aggregate, the same number of shares.

(3) The surrender of a number of certificates of reissuance, to the same stockholder, of a single certificate for the same number of shares.

(4) The transfer of a fraction of a share of stock or a certificate representing the right to receive less than one share of stock.

We reach the following conclusions regarding the issue raised by Petitioner.

The surrender of Old NYNEX shares to Bell Atlantic by the shareholders of Old NYNEX in exchange for new shares of Bell Atlantic will not be subject to the Stock Transfer Tax. By operation of the Merger Agreement, once the Merger occurs, the shares to be surrendered no longer represent legally valid stock of Old NYNEX, but instead represent an ownership interest in Bell Atlantic and are, in effect, originally issued shares of Bell Atlantic. The original issuance of stock is exempt from the imposition of the Stock Transfer Tax (Regulations, section 440.1(h)). When the exchange of shares takes place, the Old NYNEX shareholders are, therefore, exchanging Bell Atlantic stock for new certificates of Bell Atlantic stock. Pursuant to paragraphs (2) and (3) of

section 440.1(j) of the Stock Transfer Tax Regulations, the surrender of a certificate of stock previously issued to a stockholder (the Old NYNEX certificates, which represent newly issued shares of Bell Atlantic) in exchange for new certificates of the same issue (the new certificates of Bell Atlantic stock) to the same stockholder representing, in the aggregate, the same number of shares, does not result in any Stock Transfer Tax liability.

The cash payments made to the Old NYNEX shareholders where, as a result of the Exchange Ratio, the conversion would have resulted in a fractional share of Bell Atlantic stock, will not be subject to the Stock Transfer Tax because the sale is of less than one share of stock (Regulations, section 440.1(j)(4)).

The conversion of each share of Merger Subsidiary stock into 1,000 shares of New NYNEX stock will not be subject to the Stock Transfer Tax. Once the Merger takes place, the Merger Subsidiary shares represent an ownership interest in New NYNEX, as the survivor of the Merger and are, in effect, originally issued shares of New NYNEX. These shares are, therefore, certificates of New NYNEX being exchanged for several new certificates of the same issue (*i.e.*, one share of Merger Subsidiary stock is converted into 1,000 shares of New NYNEX). As is discussed above with respect to the surrender and exchange of shares between the shareholders of Old NYNEX and Bell Atlantic, this type of transaction does not result in any Stock Transfer Tax liability.

Dated: November 27, 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.