

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

TSB-A-85 (2) R
Real Property Transfer
Gains Tax
June 25, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M850411A

On April 11, 1985 a Petition for Advisory Opinion was received on behalf of the 340 West 89th Corporation located at 307 West 90th Street, New York, New York 10024.

The issue raised is whether consideration received by the Petitioner from the transfer of contiguous properties to one transferee by separate deeds should be added together for purposes of applying the \$1 million exemption to determine if such transaction will be subject to the Real Property Transfer Gains Tax imposed by Article 31-B of the Tax Law.

Petitioner describes the properties involved in the proposed transaction as follows:

The properties (hereinafter the "Buildings"), which have been held in ownership by the Petitioner since 1969, are three contiguous buildings located at 345 West 87th Street, New York, New York (Block 1249, Lot 13), 347 West 87th Street, New York, New York (Block 1249, Lot 12), and 349 West 87th Street, New York, New York (Block 1249, Lot 11).

Notwithstanding the common ownership of the Buildings, and the fact that they share one common oil tank, Petitioner claims that the Buildings are in all respects separate, independent and distinct from one another, as demonstrated by the following characteristics, among others: independent plumbing, heating and electrical systems; separate metering for gas and electricity; separate entrances, stairways and mailboxes in the Buildings; separate multiple dwelling registration numbers; separate registrations under the Division of Housing and Community Renewal; and separate tax block and lots.

Petitioner employs the Buildings as residential dwellings to produce rental income.

It is the contention of the Petitioner that the only correlation between the Buildings is their contiguity. Petitioner contends that the Buildings are not being used for a common or related purpose.

A "transfer of real property" is defined in Section 1440.7 of Article 31-B of the Tax Law to mean "the transfer or transfers of any interest in real property." The separate deed transfers of contiguous properties to one transferee are considered, for purposes of the Gains Tax, a single transfer of real property. However, if the properties are not used for a common or related purpose, the consideration will not be aggregated.

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Since Petitioner employs all three of the Buildings as residential dwellings to produce rental income, the Buildings are deemed to be used for a common or related purpose. Accordingly, the consideration received by the Petitioner for the transfer of these properties to one transferee must be aggregated for purposes of applying the \$1 million exemption to determine if the gain from such transfer is subject to the Real Property Transfer Gains Tax.

DATED: June 17, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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