

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

TSB-A-82(4)C
Corporation Tax
March 22, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C811117D

On November 17, 1981, a Petition for Advisory Opinion was received from Arthur J. Giglio, C.P.A., 50 Brookdale Drive, Yonkers, New York 10710.

The issue raised is whether an unincorporated condominium association organized under Article 9-B of the Real Property Law is subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law.

The condominium association in question, which is not named in the Petition, is an unincorporated 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 160 unit development and is headed by unit homeowners. The income of the association is derived from: 1) assessments received from unit homeowners; 2) coin operated laundry machines used by unit homeowners; 3) pool guest fees; 4) additional contributions from the development sponsor in excess of his prorata share of assessments on unit homeowners; 5) a monthly rental received from a tenant of a unit which is owned by the condominium association. The income is used to pay for the maintenance of common areas, fuel used to heat individual units of homeowners and insurance on common areas, among other items. Excess income is allocated to a reserve for future improvements.

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

"For the privilege of exercising its corporate franchise, or 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.

1) The terms 'joint stock company' and 'association' include every unincorporated joint stock association, joint stock company or enterprise having written articles of association and capital stock divided into shares. The term 'association' includes a 'joint stock association'.

. . . . " 20 NYCRR 1-2.3

Inasmuch as the condominium association in question is not an entity created in corporate form, does not issue to its members certificates or other written instruments which evidence an interest in or ownership of the association, does not have capital stock divided into shares, and assuming that the association is not conducted as a corporation, the same would not constitute a corporation for purposes of Article 9-A of the Tax Law and would accordingly not be subject to the tax imposed under that Article.

DATED: March 17, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau