

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

TSB-A-86 (4) C  
Corporation Tax  
January 22, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C851022C

On October 22, 1985, a Petition for Advisory Opinion was received from Heritage Hills Society, Ltd., Route 202, Somers, New York 10589.

The issue raised is whether under Article 9-A of the Tax Law, the taxable income of a Not-For-Profit Corporation is limited to interest income when such corporation is a homeowners association pursuant to section 528 of the Internal Revenue Code and its income is made up of exempt function income from its members-owners and interest on its bank accounts.

Petitioner is incorporated under the Not-For-Profit Corporation Law. Petitioner was formed to operate and maintain social, cultural and recreation facilities, as well as certain roads existing and which may hereafter be constructed for the residents of a real estate development.

Petitioner issues one membership for each condominium unit and the membership is automatically transferred to the grantee upon conveyance of any such condominium unit. Each membership is entitled to one vote.

The Board of Directors prepares estimates of the costs and expenses of rendering the operating, maintenance and management services and apportions such costs and expenses equally among the members, who make monthly payments as fixed, from time to time, by the Board of Directors. Petitioner sets aside reserve funds to replace its shuttle buses as needed. Such funds are deposited in an interest bearing bank account.

Petitioner states that it is a homeowners association pursuant to section 528 of the Internal Revenue Code and its income consists of exempt function income from its members-owners of residential units and interest income on Petitioner's bank accounts.

Subdivision one of section 209 of the Tax Law, contained in Article 9-A, imposes the Franchise Tax on Business Corporations, as follows:

"For 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, or upon such other basis as may be applicable as hereinafter provided. . . ."

A homeowners association formed under the Not-For-Profit Corporation Law is clearly a corporation described in the foregoing provision, and is not a corporation specified in subdivision four of section 209 of the Tax Law.

Subdivision (b) of section 1-3.4 of the Business Corporation Franchise Tax Regulations describes an exemption applicable to:

"(6) corporations organized other than for profit which do not have stock or shares or certificates for stock or for shares and which are operated on a non-profit basis no part of the net earnings of which inures to the benefit of any officer, director, or member, including Not-For-Profit Corporations and Religious Corporations . . . ."  
20 NYCRR 1-3.4(b)(6).

For Federal income tax purposes, the provision of management and the maintenance and care of association property constitute an "inurement of net earnings" of the homeowners association to the benefit of its members. Cornhill Commons Homeowners Association, Inc., Advisory Opinion of the State Tax Commission, March 10, 1982, TSB-A-82(2)C. Such interpretation is applicable herein. 20 NYCRR 1-2.1. It is apparent from Petitioner's description of the use of its funds that the net earnings of Petitioner will inure to the benefit of its members. Therefore, Petitioner is not exempt from the tax imposed under Article 9-A of the Tax Law.

Subdivision nine of section 208 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 such subdivision nine of section 208 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 subdivision nine of section 208 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, Petitioner is subject to the Franchise Tax on Business Corporations imposed under Article 9-A of the Tax Law, and will be required to pay an annual franchise tax upon the basis of its entire net income or upon such other basis as may be applicable. If Petitioner elects to file as a homeowners association pursuant to section 528 of the Internal Revenue Code, Petitioner's Federal taxable income for purposes of subdivision nine of section 208 of the Tax Law, will be presumed

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to be the same as its taxable income as computed under section 528(d) of the Internal Revenue Code. Petitioner is required to file an annual corporation franchise tax return on Form CT-3 (long form) or CT-4 (short form), whichever is appropriate.

DATED: January 22, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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