

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

TSB-A-90(14)C
Corporation Tax
July 5, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C900312A

On March 12, 1990, a Petition for Advisory Opinion was received from Corporate Property Investors, 305 East 57th Street, New York, New York 10017.

The issue raised by Petitioner, Corporate Property Investors, is whether a qualified real estate investment trust subsidiary, within the meaning of section 856(i) of the Internal Revenue Code, will be treated as a separate corporation for purposes of Article 9-A of the Tax Law.

Petitioner was organized as a Massachusetts business trust in 1971 and from its inception has elected to be treated as a real estate investment trust (hereinafter "REIT") under section 856 of the Internal Revenue Code (hereinafter "IRC") Petitioner has, at all times, been subject to federal taxation under section 857 of the IRC.

Petitioner will organize a wholly owned Delaware corporate subsidiary (hereinafter "Sub") to hold an interest in a partnership that will acquire an office building in New York. Sub will be a "qualified REIT subsidiary" within the meaning of section 856(i) of the IRC.

Section 856(i)(1) of the IRC provides that a corporation that is a qualified REIT subsidiary is not treated as a separate corporation and all its assets, liabilities and items of income, deduction and credit are treated as assets, liabilities and such items (as the case may be) of the parent REIT.

A qualified REIT subsidiary is treated as having no separate corporate existence for federal income tax purposes, and accordingly has no separate items of assets; liabilities, income, deduction or credit. Rather, the parent REIT is treated as holding all the assets and bearing all the liabilities of the qualified REIT subsidiary, and all items of income, deduction and credit attributable to the qualified REIT subsidiary are taken into account in calculating the real estate investment trust taxable income and federal income tax liability of the parent REIT.

Section 209.1 of Article 9-A of the Tax Law imposes the business corporation franchise tax on every foreign corporation, unless specifically exempt, for the privilege of doing business, or of employing capital, or of owning or leasing property in New York State in a corporate or organized capacity, or of maintaining an office in New York State.

Section 1-3.2(a)(5) of the Business Corporation Franchise Tax Regulations (hereinafter "Regulations") provides that: [i]n general, if a partnership is doing business, employing capital, owning or leasing property or maintaining an office in New York State, then all of its corporate partners are subject to the tax imposed by article 9-A of the Tax Law. The term 'partnership' means a partnership, joint venture or other similar unincorporated entity."

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Herein, Sub is a foreign corporation organized to hold an interest in a partnership that will acquire an office building in New York. Therefore, pursuant to section 209.1 of the Tax Law and section 1-3.2(a)(5) of the Regulations, Sub is a corporation that is subject to tax under Article 9-A of the Tax Law.

Section 209.5 of the Tax Law provides that for any taxable year of a REIT, as defined in section 856 of the IRC, in which such trust is subject to federal income taxation under section 857 of the IRC, such trust is subject to a tax computed under section 210.1(a), (c) or (d), whichever is greatest. In the case of such a REIT, the term "entire net income" means "real estate investment trust taxable income" as defined in section 857(b)(2) of the IRC (as modified by section 858 of the IRC plus the amount taxable under section 857(b)(3) of the IRC, subject to the modification required by section 208.9 of the Tax Law (other than the modification required by 208.9(a)(2)) including the modifications required by section 210.3(d) and (e) of the Tax Law.

Herein, Petitioner is a REIT subject to federal income taxation under section 857 of the IRC. Sub is a "qualified REIT subsidiary" under section 856(i) of the IRC. Therefore, for federal income tax purposes, Sub is not treated as a separate corporation. In addition, the "real estate investment trust taxable income" of Petitioner, pursuant to section 857 of the IRC as modified by section 858 of the IRC, will include all items of income, deduction and credit of Sub.

Accordingly, even though Sub is a corporation subject to tax under Article 9-A, all of Sub's assets, liabilities, income, deductions and credits will be treated as assets, liabilities and such items (as the case may be) of Petitioner and will be reflected in the "real estate investment trust taxable income" of Petitioner. Therefore, the tax imposed on Sub will be the fixed dollar minimum as determined pursuant to section 210.1(d) of the Tax Law.

DATED: July 5, 1990

s\PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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