

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

TSB-A-99(24)C
Corporation Tax
September 24, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C990720B

On July 20, 1999, Petitions for Advisory Opinion were received from Sunnyside of Bethpage Redevelopment Company Owners Corp I, and Sunnyside of Bethpage Redevelopment Company Owners Corp II, c/o Total Community Management, 2375 Bedford Ave, Bellmore, New York 11710-3620. The Petitions have been consolidated and are addressed in this Advisory Opinion.

The issue raised by Petitioners, Sunnyside of Bethpage Redevelopment Company Owners Corp I ("Corp I"), and Sunnyside of Bethpage Redevelopment Company Owners Corp II ("Corp II"), is whether they are subject to franchise tax under Article 9-A of the Tax Law.

Petitioners submit the following facts as the basis for this Advisory Opinion.

Corp I was formed as mutual redevelopment company on or about August 31, 1995 pursuant to Article 5 of the Private Housing Finance Law of New York State, as amended ("Article 5 of the PHFL"), and is a corporation organized under section 402 of the Business Corporation Law. Corp II was formed as a mutual redevelopment company on or about August 28, 1996 pursuant to Article 5 of the PHFL, and is a corporation organized under section 402 of the Business Corporation Law.

The purposes for which Corp I and Corp II, respectively, were formed are as follows:

(a) Acquire one or more areas under a plan or plans, and construct, own, maintain, operate, sell and convey projects pursuant to the terms and provisions of Article 5 of the PHFL; and particularly to acquire, construct, own, maintain and operate a residential housing project know as Sunnyside of Bethpage ("Project"), located in the Town of Oyster Bay ("Town"), County of Nassau, State of New York, pursuant to the terms and provisions of Article 5 of the PHFL, and subject to the supervision of the Comptroller of the Town ("Supervising Agency"); and to provide residences for shareholders of Corp I and Corp II, respectively, by leasing to them, under proprietary leases, apartments in the buildings owned by Corp I and Corp II, respectively, and each of the shareholders shall be entitled solely by reason of his/her ownership of shares in Corp I and Corp II, respectively, to a proprietary lease entitling him/her to occupy for dwelling purposes an apartment in one of the buildings under said proprietary leases.

(b) Acquire by purchase, lease or otherwise real estate and rights or interests in real estate, together with the buildings and appurtenances thereto, and any and all personal property of whatsoever kind and nature located therein; to hold, operate, manage, sell, exchange, mortgage or otherwise encumber or dispose of, improve, rehabilitate, renovate, construct, alter, maintain, develop, repair and lease the same and the several parts and apartments in

any building owned by Corp I and Corp II, respectively, and in any replacements thereof or additions thereto.

(c) Do and perform every act required or permitted by law to be done or performed in the construction, erection, maintenance, operation, repair, rehabilitation and renovation of such buildings; to acquire, construct, maintain and operate all necessary or customary conveniences such as lighting, heating and refrigeration in connection with the operation of any and all of the aforesaid buildings; and manufacture or otherwise acquire and to sell, supply or otherwise furnish or dispose of other conveniences and services of every kind and description for tenants/shareholders of property owned or operated by Corp I and Corp II, respectively.

(d) Purchase, acquire, hold and dispose of shares or rights to subscribe thereto, bonds and other obligations; to possess and exercise in respect thereto all the rights, powers and privileges of individual holders or owners thereof, and to exercise any and all voting power thereon.

(e) Borrow or raise monies for any of the purposes of Corp I and Corp II, respectively, in accordance with the provisions of Article 5 of the PHFL; issue bonds, debentures, notes or other obligations of any nature, or in any manner, for monies so borrowed and to secure the payment thereof and the interest thereon by mortgage upon or pledge or conveyance or assignment in trust of the whole or any part of the property of Corp I and Corp II, respectively, real or personal, provided the same be permitted by law.

(f) Do and transact all other lawful business incident to, necessary, and suitable or advisable for, or in any way connected with, said purposes for which Corp I and Corp II, respectively, are formed.

(g) The foregoing clauses hereto shall be construed as stating both purposes and powers, but nothing herein contained shall be deemed to limit or exclude any power, right or privilege given to Corp I and Corp II, respectively, by law.

The principal business office of Corp I and Corp II, respectively, is located within the Town of Oyster Bay, County of Nassau, State of New York. Corp I and Corp II, respectively, have been organized to serve a public purpose, and are subject to the supervision and control of the Supervising Agency, except as provided in Article 5 of the PHFL, so long as such Article 5 remains applicable to any project of Corp I and Corp II, respectively; and all real and personal property acquired by Corp I and Corp II, respectively, and all structures erected by Corp I and Corp II, respectively, were acquired or created for the promotion of the purposes of such Article 5. No salary or other form of compensation is paid to any director or officer of Corp I and Corp II, respectively, for services rendered.

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Corp I and Corp II, respectively, are affordable retirement communities with 136 and 164 housing units, respectively. As such, the communities represent a significant addition to the housing facilities available to meet the needs of the retired and elderly. Purchases of the units must meet both age and income limit requirements.

Corp I and Corp II, respectively, qualify as a "cooperative housing corporation" under section 216 of the Internal Revenue Code, and the tenant/shareholders receive the benefit of the deductions at the personal level facilitated by that section of the Tax Law.

The local municipality has granted certain real estate tax abatements and freezes facilitated by state and local law under an arrangement known as PILOT (Payment in Lieu of Taxes.)

All the income and earnings of Corp I and Corp II, respectively, are used exclusively for corporate purposes and no part of the net income, net earnings or assets of Corp I and Corp II, respectively, will inure to the benefit or profit of any private individual, firm, corporation or association. Corp I and Corp II, respectively, operate exclusively for the benefit of persons meeting the occupancy requirements of the by-laws by meeting the stringent qualifying ownership requirements prior to purchase of shares.

Discussion

Section 209.4 of the Tax Law provides that housing companies organized and operating pursuant to Article 5 of the PHFL are not subject to tax under Article 9-A of the Tax Law.

Section 103 of Article 5 of the PHFL provides that a redevelopment company may be created as a corporation by three or more persons. Section 105 of Article 5 of the PHFL provides that the provisions of the business corporation law shall apply to redevelopment companies which are corporations, except where such provisions are in conflict with the provisions of such Article 5.

Accordingly, since Corp I and Corp II, respectively, are organized and operating pursuant to Article 5 of the PHFL, Corp I and Corp II, respectively, are not subject to the franchise tax imposed under Article 9-A of the Tax Law pursuant to section 209.4 of such Article 9-A.

DATED: September 24, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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