

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(2)M
Estate Tax
October 11, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M000502A

On May 2, 2000, a Petition for Advisory Opinion was received from John T. Sharkey, 210 Beach 140th Street, Belle Harbor, New York 11694.

The issue raised by Petitioner, John T. Sharkey, is whether Petitioner, and his spouse as a tenant in common, are deemed to be “bona fide purchasers” when they purchase the shares of a cooperative apartment in New York City from an estate, such that Petitioner and his spouse would not be responsible for the executor’s failure to pay New York State estate taxes that may be due.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner, with his spouse as a tenant in common, are purchasing shares of a cooperative apartment in New York City from an estate for \$984,000. The date of the decedent’s death is January 7, 2000.

Discussion

Section 982(a) of the Tax Law provides that unless the tax imposed by Article 26 of the Tax Law is sooner paid in full, it shall be a lien upon all property includible in the New York gross estate of the decedent for fifteen years from the date of death of the decedent, except that such part of the New York gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

Section 982(c) of the Tax Law, as effective through January 31, 2000, provides that the Commissioner of Taxation and Finance may issue a certificate of discharge of any or all of the property subject to the lien imposed by section 982, or section 996 of Article 26 of the Tax Law, if he finds that the liability secured by such lien has been fully satisfied or provided for, upon application for such discharge. A certificate of discharge issued under this section 982(c) of the Tax Law shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

Section 975(a)(1) of the Tax Law provides that the tax imposed by Article 26 of the Tax Law shall be paid by the executor, who shall thereupon charge the same against and collect it from the persons interested in the estate in accordance with the rules of apportionment of section 2-1.8 and other relevant provisions of the Estates, Powers and Trusts Law.

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Section 975(b) of the Tax Law provides that an executor who distributes any asset of the estate, prior to the payment in full of the tax imposed by Article 26 of the Tax Law, shall be answerable in his own person and estate for the payment of such tax, to the extent that the assets of the estate have been so paid out or distributed. The liability of the executor under section 975(b) shall continue until the executor's discharge as provided in section 981 of Article 26 of the Tax Law.

Section 975(f) of the Tax Law, effective through January 31, 2000, provides that if the tax imposed by Article 26 is not paid when due, then the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the New York gross estate to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in section 982 of the Tax Law, and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth. Provided, however, where any interest in such property was held by the decedent and the decedent's surviving spouse as tenants by the entirety, such interest in such property shall be divested of the lien provided in section 982 of Article 26 of the Tax Law. Effective February 1, 2000, section 975(f) of the Tax Law was relettered as section 975(e).

Although section 975(f) of the Tax Law, by its terms, applies to all property included in the New York gross estate, it is limited to such property that was received by or in the possession, on the date of death, of a "spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary." Further, section 975(f) provides that a bona fide purchaser exception to the lien applies only to such property that was transferred by a person described above. Section 975(f) of the Tax Law does not apply to the liability of the executor or to transferees of property from the estate or the executor, and the bona fide purchaser exception to the lien does not apply to the purchases from the executor or from the estate.

In this case, Petitioner and his spouse, as tenants in common, are purchasing shares of a cooperative apartment from an estate. It is assumed that such shares are property that is included in the decedent's New York gross estate. Since the lien imposed under section 982(a) of the Tax Law, applies to all property includible in the New York gross estate, and the provisions of section 975(f) of the Tax Law do not apply to the purchase of such shares from the estate or the executor, Petitioner and his spouse are not considered bona fide purchasers of the shares of the cooperative apartment pursuant to section 975 of the Tax Law. If the tax imposed by Article 26 is not paid when due, and

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the executor's liability has not been discharged pursuant to section 981 of the Tax Law, then the Petitioner and his spouse, as purchasers receiving property that is included in the New York gross estate of the decedent, would be personally liable for such tax to the extent of the value, on the date of the decedent's death, of the shares of the cooperative apartment.

However, if it is not established that the executor's liability has been discharged as provided in section 981 of the Tax Law, then, pursuant to section 982(c) of the Tax Law, as effective through January 31, 2000, application may be made to the Commissioner of Taxation and Finance for a certificate of discharge of the shares of the cooperative apartment. An issued certificate of discharge under section 982(c) of the Tax Law is conclusive evidence that the lien upon the property covered by the certificate is extinguished.

DATED: October 11, 2000

/s/
Jonathan Pessen
Tax Regulations Specialist III
Technical Services Division

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