

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

TSB-A-99(5)R
Real Estate Transfer Tax
September 17, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M990524B

On May 24, 1999, the Department of Taxation and Finance received Petitions for Advisory Opinion from the following petitioners: 149 Realty Associates; Shelburne Murray Hill; Patrick Denihan et al, d/b/a Denart Company; Plaza 50 Company; Chelsea Tower Company; and Lyden Hotel Co. All of the petitioners have a mailing address of 500 West 37th Street, New York, NY 10018. Each of the Petitioners is a general partnership, the beneficial ownership of each Petitioner is identical, and the issue being raised in each petition is also identical. Therefore, the petitions have been consolidated and will be addressed jointly in this Advisory Opinion.

The issue raised by each Petitioner is whether the conveyance of an interest in a parcel of real property from a general partnership to a limited liability company will be exempt from the Real Estate Transfer Tax imposed pursuant to Article 31 of the Tax Law.

The Petitioners present the following facts. Each Petitioner is a general partnership organized under New York law. Each Petitioner holds an interest in real property as follows:

<u>Petitioner</u>	<u>Property</u>	<u>Type of interest</u>
149 Realty Associates	500 West 37 th Street, New York	Fee
Shelburne Murray Hill	303 Lexington Avenue, New York	Fee
Patrick Denihan et al	222 East 39 th Street, New York	Fee
Plaza 50 Company	155 East 50 th Street, New York	Leasehold
Chelsea Tower Company	371 Seventh Avenue, New York	Fee
Lyden Hotel Co.	20 East 76 th Street, New York	Leasehold

None of the property owned or leased by any of the Petitioners comprises cooperative housing dwellings.

Each Petitioner is beneficially owned by the same six individuals, as outlined in the following ownership chart:

<u>Partner</u>	<u>Ownership Percentage</u>
Daniel Denihan, Jr.	16.66%
Benjamin Denihan, Jr.	16.66%
Brooke Barrett	16.66%
Maureen Ferrari	16.66%
Donald Denihan	16.66%
Laurence Denihan	16.66%

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Each partner in each Petitioner shares equally in all items of partnership profit, loss and capital, and each has equal voting and distribution rights.

Each Petitioner proposes to transfer its respective real property interest to a separate limited liability company ("LLC") in exchange for all of shares in such LLC. Each such LLC will be organized under New York law. Each Petitioner will continue to exist as a general partnership subsequent to the transfer of its real property interest.

The LLC shares received by each Petitioner in exchange for the transfer of its real property interest will be distributed by such Petitioner to its six individual partners. Thereafter, each LLC will be owned in equal shares by such six individuals, as members of each LLC, as follows:

Proposed Ownership of Each LLC:

<u>Partner</u>	<u>Ownership Percentage</u>
Daniel Denihan, Jr.	16.66%
Benjamin Denihan, Jr.	16.66%
Brooke Barrett	16.66%
Maureen Ferrari	16.66%
Donald Denihan	16.66%
Laurence Denihan	16.66%

Applicable Law

Section 1402 of the Tax Law imposes the real estate transfer tax on each conveyance of real property or interest therein when the consideration exceeds five hundred dollars. The term "conveyance" is defined in section 1401(e) of the Tax Law. Included in the definition of conveyance is the transfer or transfers of any interest in real property by any method.

Subdivision (f) of section 1401 of the Tax Law provides:

(f) "Interest in the real property" includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. . . . (emphasis added)

Finally, section 1405(b)(6) of the Tax Law sets forth that conveyances are exempt from the real estate transfer tax to the extent that they "effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. . . ."

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Conclusions

The respective transfers of the real property interest of each Petitioner to a new LLC will be taxable conveyances of real property, pursuant to sections 1402 and 1401(e) of the Tax Law.

However, because the ownership of each new LLC will be identical to the ownership of each Petitioner prior to the transfers, there will be no change in the beneficial ownership of each interest in real property as a result of the transfers. Therefore, the transfers would be exempt from the real estate transfer tax based on the mere change of identity or form of ownership exemption provided in section 1405(b)(6) of the Tax Law.

DATED: September 17, 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.