

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

TSB-A-86 (3) R
Real Property Transfer
Gains Tax
June 20, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M860605A

On June 5, 1986, A Petition for Advisory Opinion was received on behalf of Philip Morris Incorporated, located at 120 Park Avenue, New York, New York 10017.

The issues raised are whether the proposed transfer by the Petitioner to Miller Brewing Company of certain real property owned by the Petitioner in Cayuga County, New York, and the proposed transfer by the Petitioner to Philip Morris Companies, Inc. of all shares of The Miller Brewing Company stock which the Petitioner owns are exempt from the New York State Real Property Transfer Gains Tax (hereinafter "the Gains Tax") under section 1443.5 of the Tax Law.

The pertinent facts are as follows. Philip Morris Incorporated (hereinafter "the Petitioner") is a corporation organized under the Laws of the Commonwealth of Virginia. Miller Brewing Company (hereinafter "Miller"), a corporation organized under the Laws of the State of Wisconsin, is a wholly-owned subsidiary of the Petitioner. Philip Morris Companies, Inc. (hereinafter "Philip Morris Companies"), a corporation organized under the Laws of the Commonwealth of Virginia, owns all the outstanding stock of the Petitioner.

On June 1, 1986, the Petitioner intends to transfer to Miller certain real property owned by Petitioner in Cayuga County, New York. On July 1, 1986, the Petitioner intends to transfer to Philip Morris Companies all shares of Miller stock which the Petitioner owns.

As required by Article 31-B of the Tax Law, the Petitioner and Miller and the Petitioner and Philip Morris Companies have filed Questionnaires (Forms TP-580 and TP-581) in connection with each of the proposed transfers.

Section 1443.5 of the Tax Law exempts from the Gains Tax any transfer to the extent that such transfer "consists of a mere change of identity or form of ownership or organization, where there is no change in beneficial interest".

Additionally, section 590.50(a)(4) of the Gains Tax Regulations in implementing the provisions of section 1443.5 of the Tax Law provides that in the case of transfers by a corporation to its wholly owned subsidiary, from a wholly owned subsidiary to its parent or from one wholly owned subsidiary to another, such transfers are exempt from the Gains Tax.

It is the contention of the Petitioner that each of the proposed transfers are exempt from the Gains Tax based on the above cited section 1443.5 of the Tax Law and section 590.50(a)(4) of the Gains Tax Regulations.

TSB-A-86 (3) R
Real Property Transfer
Gains Tax
June 20, 1986

The transfer of real property by a corporation to its wholly owned subsidiary under circumstances described herein is deemed to be a mere change of identity or form of ownership or organization. Similarly, the transfer by a taxpayer to its parent corporation of all of the shares of a subsidiary of the taxpayer under circumstances described herein is deemed to be a mere change of identity or form of ownership or organization.

Accordingly, both of the proposed transfers described by Petitioner are exempt from the Gains Tax pursuant to the exemption created by section 1443.5 of the Tax Law.

DATED: June 20, 1986

s/Frank J. Puccia
Director
Technical Services Bureau

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