

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

TSB-A-87 (7) R
Real Property Transfer
Gains Tax
May 27, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M870408A

On April 8, 1987, a Petition for Advisory Opinion was received on behalf of Tower 56 Partners, located at 126 East 56th Street, 30th Floor, New York, New York, 10022.

The issue raised is whether the method chosen by the Petitioner of computing the amount of construction period interest, construction period real property taxes, insurance, security and specifically identified indirect project costs, to be included in the original purchase price of a building for the purpose of computing the Real Property Transfer Gains Tax imposed by Article 31-B of the Tax Law (hereinafter the "Gains Tax") would be accepted by the Department of Taxation and Finance (hereinafter the "Department").

The facts as presented are that the Petitioner, a New York partnership, owns an office building (hereinafter the "Building") in New York City at 126 East 56th Street. Financing for the construction of the Building was provided by National Bank of North America, predecessor to National Westminster Bank USA. The Petitioner has leased and intends to continue to lease floors of the Building to individual tenants.

Construction of the Building began in June 1981 and occurred in two stages: During the first stage, the Building's foundation, shell (including external walls), core and lobby were substantially completed, as evidenced by the issuance of a temporary certificate of occupancy. The first stage of construction was substantially completed in December of 1983.

During the second stage, the Partnership entered into leases covering one or more floors with individual tenants and completed construction of the leased floor(s) according to the particular tenant's specifications. This second stage of construction included, as to each such floor, the installation of air- conditioning ducts, sprinkler systems, flooring, ceiling, lighting, electrical and telephone outlets, and any necessary partitions on the particular leased floor(s). The second stage of construction began in January 1984 and was completed in September 1985.

Since construction of the Building was not completed at a single time, but rather on a floor by floor basis, Petitioner proposes that for purposes of computing the original purchase price of the Building, interest on loans incurred in connection with the construction of the Building, construction period real property taxes, insurance, security and specifically identified indirect project costs be allocated to a particular floor in proportion to the ratio of that floor's square footage to the Building's total square footage and such amounts be included in the original purchase price of the Building to the extent paid or accrued through the date that construction ended with respect to that particular floor.

Gains Tax regulations 590.16(d) in describing the costs to be included as costs of constructing capital improvements states in pertinent part as follows:

- (d) Q. What additional costs are allowed if incurred during a construction period?
- A. Other costs that are clearly associated with construction of a real estate project can also be included as a cost of constructing a capital improvement. If the capital improvement requires a construction period, a period of time in which necessary activities are conducted to bring the improvement on the real property to that state or condition necessary for its intended use, the interest cost paid during that period on a construction loan, real property taxes, insurance or similar items are includible as a cost of construction.

Also, section 590.16(d) of the Gains Tax regulations states in pertinent part as follows:

Indirect project costs may also be included in original purchase price if they are specifically identified with a project. Indirect project costs are indirect costs incurred after the acquisition of the property, such as construction administration costs, legal fees, and various office costs (cost accounting expenses, design costs, and other expenses of departments providing services to projects), that clearly relate to projects under construction. The full amount of indirect project costs that clearly relate to a specific project, such as costs associated with a field office at a project site and the administrative personnel that staff the office, may be added to the cost of the capital improvement. However, indirect project costs which relate to numerous projects must be allocated in a rational manner to the projects to which the cost relate based on the nature of activity that gave rise to the costs.

Indirect project costs that do not clearly pertain to projects under construction and all general and administrative costs cannot be added to the cost of capital improvement. General and administrative costs include such costs as corporate management salaries, general accounting expenses, corporate office expenses, general legal fees, and similar costs which are generally incurred by all enterprises in the conduct of business.

In addition section 590.16(e) of the Gains Tax regulations states in pertinent part:

The construction period ends when the real property is substantially complete and ready to be placed in service. Some construction projects are completed in sections, leaving part of the real property capable of being used independently while construction continues on other sections. For such projects, allowable construction period expenses shall cease on each part when it is substantially complete and ready for use. A construction period for a project may be suspended before a project is completed for various reasons, such as insufficient sales or insufficient rental demands. In such a case, the construction period has ended, and the costs allowed during a construction period will no longer be allowed.

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Based on the foregoing, the costs of interest on construction loans incurred in connection with the construction of the Building, construction period real property taxes, insurance, security, and specifically identified indirect project costs accruing during a construction period are allowed as costs of constructing of a capital improvement. The method of allocating such costs in the case of a construction project which is completed in steps is not specifically stated in the Gains Tax regulations. However, the method chosen by the Petitioner of allocating such costs would be deemed a proper method as long as it resulted in an equitable allocation.

Also, as provided at Section 590.16(e), if there is a suspension of the construction activity between the end of the first stage of construction and the beginning of the second stage the costs allowed during a construction period will no longer be allowed between such stages.

DATED: May 27, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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