

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

TSB-A-83 (3) M
Gains Tax
November 21, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M830830B

On August 23, 1983, a Petition for Advisory Opinion was filed by Jefferson Highland Corporation, 3666 Hill Boulevard, Jefferson Valley, New York 10535.

Petitioner inquires as to whether the conveyance of title to real property valued at over one million dollars by a corporation, upon its liquidation, to its sole shareholder, a partnership, is a transfer of real property taxable under the Tax on Gains Derived From Certain Real Property Transfers imposed by Article 31-B of the Tax Law.

Section 1440.7 of the Tax Law provides, in part, as follows:

"'Transfer of real property' means the transfer of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option transferred with use and occupancy of real property, trust indenture, taking by eminent domain, conveyance upon liquidation" (emphasis added)

Thus, a conveyance of real property as part of a corporate liquidation is a transfer of real property, and the gain derived therefrom is generally subject to tax. (Tax Law, § 1441) However, subdivision 5 of section 1443 of the Tax Law provides an exemption from tax with respect to a transfer of real property, however effected, which consists of a mere change of identity or form of ownership or organization, where there is no change in beneficial interest.

The sole shareholder of a corporation may be considered the equitable owner of the corporation's real property since, as a practical matter, he controls the use and disposition of such property. (See Department of Taxation and Finance Publication 588, Q&A #25C.) In the transaction at issue, the sole stockholder is a partnership. Nevertheless, it is the equitable owner of the corporation's property, since it controls the use and disposition of such property. Accordingly, the conveyance of title to the corporation's real property upon its liquidation to its sole stockholder will constitute a mere change in form of ownership of the real property, with no change in beneficial interest. Therefore, the transfer will be exempt from the real property gains tax by reason of section 1443.5 of the Tax Law.

It is to be noted that should the partnership subsequently transfer the real property so acquired, in computing its original purchase price for purposes of computing the real property gains tax the "consideration paid by the transferor to acquire real property or a controlling interest therein" is that paid by the corporation.

DATED: November 10, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau