

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

TSB-A-86 (1) R  
Real Property Transfer  
Gains Tax  
January 6, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. M851106C

On November 6, 1985, a Petition for Advisory Opinion was received from B. Bros. Realty Corporation located at 641 Lexington Avenue, New York, New York 10022.

The issue raised concerns the application of the Real Property Transfer Gains Tax imposed by Article 31-B of the Tax Law (hereinafter the "gains tax") to the following factual situation.

It is proposed that B. Bros. Realty Corporation (hereinafter "B. Bros."), which owns certain real property in New York State, be completely liquidated within one calendar month pursuant to Section 333 of the Internal Revenue Code (hereinafter the "Code"). Prior to the liquidation, all of the stock will be contributed by B. Bros. shareholders to a newly formed limited partnership (hereinafter the "Partnership"). After the contribution, each shareholder of B. Bros. will receive a pro rata interest in the Partnership based upon such shareholder's proportionate stock interest in B. Bros. However, some of the shareholders of B. Bros. will receive general partner interests in the Partnership, whereas other shareholders will receive only limited partner interests. Notwithstanding the fact that some shareholders of B. Bros. will acquire general partner interests and other shareholders of B. Bros. will acquire only limited partner interests in the Partnership, the shareholders of B. Bros. will receive ownership interests in the Partnership equal to their pro rata ownership interest in B. Bros.

All of the property of B. Bros., except money necessary to satisfy obligations, will be distributed to the Partnership in full payment in exchange for the stock in complete liquidation and all of its stock will be cancelled. Upon receipt of the assets of B. Bros. distributed in liquidation, the Partnership will carry on the activities formerly conducted by B. Bros.

Prior to the date of the liquidation, B. Bros. may borrow funds and, with respect to the borrowing, may permit a mortgage to be placed on certain of its properties. The proceeds of the borrowing will be used to retire the bonds of B. Bros. that are outstanding and to satisfy other liabilities of B. Bros.

Prior to the date of the liquidation, it is anticipated that all of the preferred stock of B. Bros. will be converted to common stock pursuant to a tax free reorganization under section 368(a)(1)(E) of the Code, with each preferred shareholder of B. Bros. converting his or her preferred stock, as provided in the certificate of incorporation of B. Bros., for common stock of B. Bros. of equal value.

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On the date of liquidation, all the assets and liabilities of B. Bros. will be distributed to the Partnership in liquidation and the outstanding stock of B. Bros. will be cancelled. B. Bros. will thereafter be dissolved under State law.

It is the contention of the Petitioner that the proposed transaction herein described should be exempt from the Real Property Transfer Gains Tax. This contention is based on the exemption provided in Section 1443.5 of the Tax Law which provides for a total or partial exemption from the gains tax when a transfer of real property, however affected, consists of a mere change of identity or form of ownership or organization where there is no change in beneficial interest.

Based on the facts presented, the proposed transfer of stock of B. Bros. by its shareholders to a partnership in exchange for a pro rata ownership interest in the partnership and the subsequent liquidation of B. Bros. would constitute a mere change of identity or form of ownership or organization with no change in beneficial interest resulting. Accordingly, the exemption provided in Section 1443.5 of the Tax Law is applicable and the proposed transaction would not be subject to the Real Property Transfer Gains Tax. However, the appropriate Gains Tax Questionnaires must be filed to claim the exemption under Section 1443.5 of the Tax Law.

DATED: December 12, 1985

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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