

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

TSB-A-92 (2)S
Sales Tax
January 30, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910917B

On September 17, 1991 a Petition for Advisory Opinion was received from United Veterans Mutual Housing Company, Inc., 221-22 Manor Road, Queens Village, New York 11427.

The issue raised by Petitioner, United Veterans Mutual Housing Company, Inc., is whether it is required to collect sales tax on fees charged for parking spaces and garages.

Petitioner is a Cooperative Real Estate Corporation consisting of approximately 850 apartments, located in Queens County. The units were constructed prior to 1954. They were constructed under the Private Housing Finance Law and the corporation was considered to be a limited dividend housing corporation. It initially had a 100% real estate tax exemption which had now expired. The project initially was operated under the direction of the New York State Division of Housing but now is a totally private enterprise. The facility qualifies as a Garden Type Maisonette Dwelling Project under Section 4, subd. 8b of the New York Multiple Dwelling Law. Such housing if erected prior to April 18, 1954 were deemed to be a group of private dwellings. If erected subsequent to that date, such housing was deemed to be a group of multiple dwellings.

Tenant-shareholders do not and cannot own the parking spaces. All parking spaces are leased by the cooperative corporation to the lessee, the charges for the parking are separate from the monthly maintenance charges and tenant-shareholders are not required to lease a parking space.

Subdivision 8 of the Multiple Dwelling Law provides that:

8. a. A "class A" multiple dwelling is a multiple dwelling which is occupied, as a rule, for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings.

b. A "garden-type maisonette dwelling project" is a series of attached, detached or semi-detached dwelling units which are provided as a group collectively with all essential services such as, but not limited to, water supply and house sewers, and which units are located on a site or plot not less than twenty thousand square feet

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in area under common ownership and erected under plans filed with the department on or after April eighteenth, nineteen hundred fifty-four, and which units together and in their aggregate are arranged or designed to provide three or more apartments.

Section 1105(c)(6) of the Tax Law imposes a tax upon the services of "[P]roviding parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles."

The only charge for parking that is excluded from sales tax by Section 1105(c)(6) of the Tax Law is for parking that is part of a premises occupied solely as a private one or two family dwelling. Petitioner is a corporation which owns over 850 apartments. The parking facilities are not part of the individual residences. Consequently, its charges for parking and garage space are not excluded from the tax imposed under Section 1105(c)(6) of the Tax Law. The fact that at one time a "garage type maisonette dwelling project" was not considered to be a multiple dwelling under the Multiple Dwelling Law is not relevant to the issue as to whether the project is entitled to the exemption provided by Section 1105(c)(6) of the Tax Law.

DATED: January 30, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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