

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

TSB-A-90(19)C  
Corporation Tax  
September 27, 1990

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C900823C

On August 23, 1990 a Petition for Advisory Opinion was received from Douglas Condon, 347 5th Avenue, Suite 803, New York, New York 10016.

The issue raised by Petitioner, Douglas Condon, is whether a corporation organized pursuant to Article 11 of the Private Housing Finance Law and Section 402 of the Business Corporation Law which becomes a cooperative housing corporation pursuant to Section 216 of the Internal Revenue Code is required to file New York State and New York City tax returns.

The corporation at issue is organized pursuant to Article 11 of the Private Housing Finance Law and Section 402 of the Business Corporation Law.

The corporation is organized exclusively for the purpose of developing a housing project for persons of low income and is located in Bronx, New York. All income and earnings of the corporation shall be used exclusively for corporate purposes and no part of the net income, net earnings or assets of the corporation shall inure to the benefit or profit of any private individual, firm, corporation or association.

The housing project of the corporation shall be operated exclusively for the benefit of persons who are entitled to occupancy in the housing project by reason of ownership of shares in the corporation.

Section 209.4 of Article 9-A of the Tax Law provides in part that:

". . .housing development fund companies organized pursuant to the provisions of article eleven of the private housing finance law shall not be subject to tax under this article."

Since the corporation at issue was organized pursuant to Article 11 of the Private Housing Finance Law, it is not subject to tax under Article 9-A of the Tax Law. Accordingly the corporation is not required to file any corporation franchise tax returns with the Department of Taxation and Finance. The fact that the corporation may be a cooperative housing corporation as defined in Section 216(b)(1) of the Internal Revenue Code and may be required to file federal tax returns with the Internal Revenue Service and pay federal corporate income tax on a portion of its income, does not impose any obligation upon it to file any New York State corporation franchise tax returns or pay any New York State corporation franchise tax.

Section 171, paragraph twenty-fourth of the Tax Law provides that the Commissioner of Taxation and Finance shall "render advisory opinions with respect to taxes administered by such commissioner. . . ." The New York City General Corporation Tax is not among the taxes

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administered by the Commissioner of Taxation and Finance. Accordingly, the Commissioner is not authorized to issue an advisory opinion with respect to such tax and no opinion is rendered herein with respect to the issue of whether the corporation in issue is required to file New York City tax returns.

DATED: September 27, 1990

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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