

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

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Estate and Gift Tax
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Subject: Condominium and Cooperative Apartment Corporations distinguished.

The purpose of this technical memorandum is to provide substantiating information as to the distinguishing characteristics of ownership of a condominium and cooperative apartment -- whether real property or intangible personal property within the meaning of sections 954 and 960 of the Tax Law.

In Volumn II(revised) of N.Y. Jurisprudence, the section entitled "Cooperative Associations and Corporations and Condominiums defines "cooperative apartment house" as a multi-unit dwelling in which each resident has - -

1. an interest in the entity owning the building
and
2. a lease entitling him to occupy a particular apartment within the building (such lease may be referred to as a "proprietary" lease)

Definitions of "cooperative housing (apartment) corporation" and "tenant-stockholder" are contained in sub-paragraph 12 of section 360 of Article 16 of the New York Tax Law and sub-section (b) of section 216 of the federal internal revenue code.)

The Uniform Condominium Act, section 1-103(7), as stated in American Jurisprudence, defines a condominium as real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of this portion. (This determination of ownership is also confirmed in Article 9-B, Condominium Act, of the New York Real Property Law, section 339-e.)

In *Penthouse Properties, Inc. v 1158 Fifth Ave. Inc.*, 256 App. Div. 685, 11 NYS 2d 417, it was held that the tenants in a cooperative housing project are the owners of stock and are not entitled to receive a deed for their fractional part of the real estate they occupy; as stockholders they have no more legal or equitable right to the real estate of the corporation than stockholders in any corporation owning real estate; the primary interest of a stockholder in a corporation formed under a cooperative corporation law is the long term proprietary lease (see, also, *People ex rel. McGoldrick v. Sterling*, 283 App. Div. 88; *Suskind v. 1136 Tenants Corp.*, 43 Misc. 2d 588; 251 NYS 2d 321).

A "proprietary" interest means any right in relation to a chattel which enables a person to retain its possession indefinitely or for a period of time.

A "chattel" may be either a "chattel personal" or a "chattel real". "Chattel real" means interests (rights) issuing out of or annexed to real estate, such as leaseholds. A "chattel paper" means a writing which evidences both a monetary obligation and a security interest in or a lease of specific goods.

In *Danforth v. McGoldrick*, 201 Misc. 480, 109 NYS 2d 387, it was held that the fact that some state and federal statutes treat the ownership of a cooperative apartment the same as ownership of a one-family house does not make the two ownerships identical.

A person purchasing stock in a corporation is not buying a house; he is buying shares in a corporation and contractual rights to occupancy of an apartment in a building owned by the corporation (see also, 1990 Seventh Ave. Co-op Corp. v. Edwards, 133 Misc. 831).

In the Matter of Miller, 205 Misc. 770, it was held that "considered separately the shares of stock (in the incorporated cooperative organization) and the proprietary apartment lease (for the hire of an apartment for 21 years) each would be considered personalty***and the fact that the stock ownership is prerequisite to the procurement of the lease would not affect the legal classification of these assets" (see, also, Despard v. Churchill 53 NY 192).

The distinguishing characteristics of a condominium and a cooperative are:

CONDOMINIUM

1. individuals take title to their units
2. individuals vote on a proportionate basis
3. individuals are taxed separate on their units
4. individuals are responsible only for mortgage indebtedness and taxes on their own property

VS

COOPERATIVE

1. individuals have stock ownership in the co-operative with the right of occupancy of a specific unit
2. each individual has one vote regardless of the size of his unit
3. individuals pay their share of taxes on the project in the monthly carrying charges
4. each individual is dependent upon the solvency of the entire project

Therefore

- a. the unit owner has an interest in real property which descends to his heirs as any other realty would
- b. homestead exemption would apply

- a. the tenant-stockholder is the owner of shares of stock which pass as personalty to his personal representative and which may be subject to securities regulations
- b. homestead exemption would not apply (see Florida Law noted below)
- c. tenant-stockholder is not a necessary part to a suit for foreclosure on the apartment building.

Condominium/cooperatives owned by deceased persons, at the time of their death, and located either in New York State or out-of-state (i.e. Florida, Connecticut, Massachusetts) present controversial estate tax determinations.

State of Florida

In the State of Florida condominium ownership is governed by Florida Statutes, Chapter 718, Condominium Act, effective January 1, 1977. Section 718.103(9) of that chapter defines a condominium, in part, as "that form of ownership of real property *** which is comprised of units that may be owned by one or more persons, and there is appurtenant to each unit an individual share in common elements". Cooperative ownership is governed by Florida Statutes, Chapter 719, Cooperative Act, effective January 1, 1977; Section 719.103(8) of that chapter defines a cooperative, in part, as "that form of ownership of improved real property under which there are units subject to ownership by one or more owners, and the ownership is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property".

Chapter 196, Exemptions, includes statutory provisions on "Homestead Exemptions". Section 196.031 provides that an exemption, for a permanent resident having legal title or beneficial title in equity to real property, up to the assessed valuation of \$5,000, may be allowed on each apartment occupied by a tenant-stockholder or member of a cooperative apartment corporation and on each condominium parcel occupied by its' owner.

State of Connecticut

Condominium ownership in the State of Connecticut is governed by the Condominium Act of 1976, effective January 1, 1977. In section 47-68a, a condominium is defined as real property; a "unit owner" means the person(s) owning a condominium unit or leasing a unit in a leasehold condominium---the heirs, executors, administrators, successors and assigns of such person(s) holding both legal and equitable title. Section 47-70 provides that "the real property submitted to a condominium declaration pursuant to this chapter---shall be conveyed to purchasers in fee simple absolute". Section 47-79 states that taxes should be assigned against and collected on each individual unit, each of which shall be carried on the tax books as a separate and distinct entity.

Sec. 12-214 (Corporation Income Tax) of the General Statute, governing cooperative housing corporations provides, in sub-paragraphs (5) and (6), that "every company in this state except nonprofit cooperative ownership housing, stock and nonstock corporations, when residence in such housing is restricted to members of the corporation and ownership in such corporation is restricted to occupants of such housing and cooperative housing corporations, as defined for federal income tax purposes, where there is no taxable income to the corporation ***shall pay, annually, a tax***.

State of Massachusetts

In the State of Massachusetts, condominium ownership is governed by Chapter 183A, General Laws, effective September 23, 1963. Section one defines "unit owner" as "the person(s) owning a unit". Section three declares each "unit as real estate and may be the subject at demise, devise, gift - - the laws of descent and distribution and all other rights incident to the holding of real estate- - ". Section 14 covers Taxability and provides that "each unit shall be considered an individual parcel of real estate for the collection of real estate taxes".

State of California

The position taken by the courts of the State of California, based on section 2188.3 of the Revenue and Taxation Code and section 783 of the Civil Code, holds that a condominium is an estate in real property which may be either an estate of inheritance or perpetual estate, an estate for life, or an estate for years, such as a leasehold or a subleasehold. Further, that each condominium owned in fee shall be separately assessed to the owner thereof.

Section 17265a of the Personal Income Tax law defines "cooperative housing corporation", in part, as a corporation in which each stockholder is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house or apartment in a building owned or leased by such corporation. Subsection (b) of section 17625 defines "tenant-stockholder" as an individual who is a stockholder in the cooperative housing corporation---

Based on the information on the foregoing pages, in auditing estate and gift tax returns, a condominium is real property and a cooperative is intangible personal property.