

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

TSB-A-92(4)-R  
Real Property  
Transfer Gains Tax  
September 24, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M920804B

On August 4, 1992, a Petition for Advisory Opinion was received from CHS of Easthampton, Inc., c/o Leonard I. Ackerman, Esq., 34 Pantigo Road, East Hampton, New York 11937.

The issue raised by Petitioner, CHS of Easthampton, Inc., is whether the sale of the premises which is owned by a corporation and occupied by its shareholders as their personal residence is subject to Real Property Transfer Gains Tax (hereinafter "gains tax").

In order to protect their confidentiality, Mr. and Mrs. A formed Petitioner to acquire title to the subject residence. Mr. and Mrs. A intend to use and occupy the premises exclusively as a residence. They will not rent or depreciate any portion of this residence.

Section 1443 of the Tax Law provides, in part, as follows:

Sec. 1443. Exemptions.- - A total or partial exemption shall be allowed in the following cases:

\* \* \*

2. If the real property consists of premises occupied by the transferor as his residence (but only with respect to that portion of the premises actually occupied and used for such purposes).

Section 590.24 of the Gains Tax Regulations provides, in part, as follows:

(d) Question: Is the sale of the premises which is owned by a corporation and occupied by its sole shareholder as his residence exempt from the gains tax pursuant to section 1443(2) of the Tax Law?

Answer: No. Generally, a corporation cannot occupy premises as its residence. However, if the transferor can establish through all the facts and circumstances that the ownership and maintenance of the premises related solely to personal use and that the premises were never treated as business property (for example, it was not depreciated for Federal income tax purposes), the exemption may be allowed. The exemption will be applied strictly on a case by case basis by taking all the facts and circumstances into consideration.

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Accordingly, pursuant to Section 590.24(d) of the Gains Tax Regulations if the Petitioner can establish through all the facts and circumstances that the ownership and maintenance of the premises is related solely to their personal use and that the premises were never treated as business property, then the exemption provided by Section 1443(a) of the Tax Law may be allowed.

DATED: September 24, 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.