STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions	:	
of	:	
BELHARA ASSOCIATES LIMITED PARTNERSHIP	:	DECISION
for Revisions of Determinations or for Refunds of Taxes on Gains Derived from Certain Real Property Transfers under Article 31-B of the Tax Law.	:	DTA Nos. 807916, 807917, 807918, 807919, 809573, 809574, 809575, 809576, 809577 and 809616

Petitioner Belhara Associates Limited Partnership, c/o Parkview Associates, Inc., 708 Third Avenue, New York, New York 10017, filed an exception to the determination of the Administrative Law Judge issued on February 17, 1994. Petitioner appeared by Margolin, Winer and Evens (James L. Tenzer, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Andrew J. Zalewski, Esq., of counsel).

Petitioner filed a letter regarding its exception. The Division of Taxation filed a letter stating it would not be filing a brief in opposition. This letter was received on June 23, 1994, which date began the six-month period for the issuance of this decision. On November 14, 1994, the Tax Appeals Tribunal issued a letter acknowledging an error in one of its briefing schedule letters and providing petitioner with another opportunity to file a brief in support of the exception. On November 14, 1994, the Tax Appeals Tribunal had one month and one week remaining to issue a decision. Petitioner filed a brief in support of the exception and the Division of Taxation again filed a letter stating no brief in opposition would be submitted. This letter was received on December 20, 1994 and began the one month and one week period for issuance of this decision. Neither party requested oral argument.

The Tax Appeals Tribunal renders the following decision per curiam.

ISSUES

I. Whether, for eight of the ten cooperative apartment projects at issue, the Division of Taxation erroneously calculated "original purchase price" used to determine petitioner's gains tax liability on the sale of shares in cooperative apartment units by its refusal to step-up petitioner's acquisition price to the fair market value of the property on the date the property was transferred or sold to the respective cooperative housing corporation.

II. Whether, for each of the ten cooperative apartment projects at issue, the Division of Taxation erroneously included a wraparound mortgage note in its calculation of "consideration" received by petitioner.

III. Whether petitioner's rights under the equal protection clauses of the United States and New York State Constitutions would be violated if (i) the Division of Taxation does not step-up petitioner's "original purchase prices" to the fair market values of the properties on the dates the properties were transferred to the respective cooperative housing corporations, and/or (ii) the Division of Taxation includes wraparound mortgage notes in its calculations of "consideration" received by petitioner.

IV. Whether the Division of Taxation erroneously disallowed so-called "conversion period interest", "conversion period real property taxes", and "advertising and promotional fees" in calculating "original purchase price".

V. Whether, if gains tax is determined to be due, petitioner may pay such tax in installments.

VI. Whether the Division of Taxation incorrectly calculated interest due.

VII. Whether petitioner demonstrated reasonable cause to abate the penalties imposed under Tax Law § 1446 if it is determined that gains tax is owing.

VIII. Whether the Division of Taxation utilized a proper method for allocating gain between the transfer of units not subject to tax as "grandfathered" units and transfers of units subject to tax.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact "17" which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

These matters involve the following ten cooperative apartment projects:

DTA #	Project	Approximate Date of First Offering as Noted in the Offering Plan	Number of Apartments
807916	Riverdale Park Apartments Riverdale, New York	October 1, 1982	265
807917	67-76 Booth Street Forest Hills, New York	October 1, 1982	128
807918	625 Gramatan Avenue Mount Vernon, New York	February 25, 1983	96
807919	280-290 Collins Avenue Mount Vernon, New York	March 28, 1983	149
809573	110-150 Draper Lane Dobbs Ferry, New York	February 25, 1983	82
809574	63-33 98th Place Rego Park, New York	January 7, 1983	143
809575	Boulevard Apartments 18-35, 18-55, 18-75 Corporal Kennedy Street 209-39 23rd Avenue Bayside, New York	January 10, 1984	247
809576	23-25 and 23-35 Bell Boulevard Bayside, New York	June 29, 1984	126
809577	Bell Apartments 211-10, 211-40 18th Avenue 211-35, 211-65 23rd Avenue 18-65 211th Street Bayside, New York	January 10, 1984	309
807616	3616 Henry Hudson Parkway Riverdale, New York	September 13, 1982	119

Petitioner was described in the offering plan for 23-25 and 23-35 Bell Boulevard, Bayside, New York (which indicated the latest date of first offering of the ten projects at issue) as follows:

> "The Sponsor, Belhara Associates Limited Partnership, is a Connecticut limited partnership having an office at 425 East 61st Street, Suite 701, New York, New York 10021. Sponsor is currently the contract vendee of the Property. MR Gold Associates Limited Partnership ('MR Gold'), located at 425 East 61st Street, Suite 701, New York, New York, and Parkview Belhara Associates Limited Partnership ('Parkview') located at 425 East 61st Street, Suite 701, New York, New York, are the general partners of Sponsor.
>
> "The following persons are the principals ('Principals') of the Sponsor who have been actively involved in the planning and consummation of this Plan:
>
> (i) Martin J. Raynes, general partner of MR Gold;
>
> (ii) Robert B. Stang, limited partner of MR Gold;
>
> (iii) William A. Wiener, limited partner of MR Gold;
>
> (iv) Richard B. Adelman, limited partner of MR Gold;
>
> (v) Frederic D. Heller, limited partner of MR Gold;
>
> (vi) Henry J. Bunis, limited partner of MR Gold;
>
> (vii) Phyllis Ostrofsky, limited partner of MR Gold;
>
> (viii) Charles R. Hack, general partner of Parkview; and
>
> (ix) James B. Mintzer, limited partner of Parkview.
>
> "Each of the Principals has a business address at 425 East 61st Street, Suite 701, New York, New York 10021.
>
> "The Principals, acting through Belhara Associates Limited Partnership and other entities, have been active in the New York City Metropolitan area in the acquisition, development and ownership of residential real estate and the conversion of non-residential properties to residential use. The following properties are the five (5) most recently offered for sale as cooperatives or condominiums in which some of the Principals have been actively involved:

Address	Year First Available for Occupancy
1. 280/290 Collins Avenue Mount Vernon, New York	anticipated - 1984
2. 625 Gramatan Avenue Mount Vernon, New York	anticipated - 1984
3. 110/150 Draper Lane	anticipated - 1984

Dobbs Ferry, New York

4. 63-33 98th Place anticipated - 1984
Rego Park, New York

5. 3050 Fairfield Avenue anticipated - 1984
Riverdale, New York"

The Division of Taxation ("Division") issued the following ten notices of determination of tax due under the gains tax law against petitioner:

DTA #	Date of Notice	Project	Amount Asserted As Due: (i) Tax	(ii) Penalty (and Penalty interest)	(iii) Interest	(iv) Total
807916	11/7/88	Riverdale Park Apts. Riverdale, NY	$ 49,039.00	$ 17,164.00	$ 18,317.00	84,520.00
807917	11/7/88	67-76 Booth St. Forest Hills, NY	36,084.00	12,944.00	17,679.00	67,707.00
807918	11/7/88	625 Gramatan Ave. Mount Vernon, NY	21,092.00	6,857.00	6,441.00	34,390.00
807919	11/29/88	280-290 Collins Ave. Mount Vernon, NY	35,072.00	12,275.00	11,530.00	58,877.00
809573	5/4/89	110-150 Draper Lane Mount Vernon, NY	33,914.00	16,087.43	11,869.75	61,871.18
809574	5/4/89	63-33 98th Place Rego Park, NY	69,914.00	31,994.59	24,469.90	126,378.49
809575	12/11/89	Boulevard Apartments Bayside, NY	256,580.15	89,803.01	111,673.87	458,057.03
809576	12/11/89	23-25 and 23-35 Bell Boulevard Bayside, NY	31,787.19	11,125.32	13,763.01	56,675.52
809577	3/3/89	Bell Apartments Bayside, NY	470,589.00	173,502.75	166,581.18	810,672.93
809616	9/25/89	3616 Henry Hudson Pkwy. Riverdale, NY	25,347.80	8,871.65	10,076.49	44,295.94

The four notices issued in November 1988 were on a Form AU-5.2 which showed the "Audit Division - Central Miscellaneous Tax Section" as the issuing entity. The notices pertaining to DTA Numbers 809573 and 809574 were on a Form DTF-963 showing the "Audit

Division - New York D.O. - Gains Tax" as the issuing entity. The notice pertaining to DTA Number 809577 was on a Form DTF-963 showing the "Audit Division - New York D.O. - Misc Tax" as the issuing entity. Finally, the notices pertaining to DTA Numbers 809575, 809576 and 809616 were on forms DTF-963F showing the "Audit Division - Gains Tax Post Transfer" as the issuing entity. The four notices issued in November 1988 also asserted additional amounts of interest with no explanation except for the notice pertaining to DTA Number 807919, which indicated that additional interest of $1,278.35 was asserted for a period from August 20, 1988 to December 9, 1988. The use of various types of notices was unexplained; this reflects the fact that the record on submission contains hundreds of pages with little or no explanation.

RIVERDALE PARK APARTMENTS

Attached to petitioner's Request for Conciliation Conference, dated January 23, 1989, is a copy of a Statement of Proposed Audit Adjustment, dated August 8, 1988, which asserts tax plus penalty and interest in the amounts noted above, but provides no explanation other than "[t]ax due per Audit." Several schedules, apparently prepared by the State's auditor, provide some detail concerning the calculation of the tax asserted as due. A so-called "WEC & Audit Schedule" dated August 17, 1988 (subsequent to the Statement of Proposed Audit Adjustment), which perhaps is an abbreviation for "worksheet estimated consideration", shows the following complex calculation of tax due of $49,039.00:

Cash consideration	$ 3,570,440.00
Bulk sale	6,035,213.00
Garage	67,390.00
Total consideration	$ 9,673,043.00
Add: Mortgage Indebtedness	3,500,000.00
Less: Mortgage Amortization	(8,750.00)
Total Estimated Consideration	$13,164,293.00
Less: Reserve Fund as per cooperative housing corporation closing	(33,695.00)
Working Fund	(1,000,000.00)
Actual Brokerage Commissions	(288,077.00)
Balance	$11,842,521.00
Less: Original Purchase Price	(11,278,108.00)
Anticipated Gain on Taxable Sale	$ 564,413.00
Tax at 10%	56,441.00
Total Taxable Shares	48,714
Anticipated tax per share	1.15862
Number of shares per audit	48,714

Total liability	$ 56,441.00
Less: Tax due on % change representing mere change of identity	(7,402.00)
Balance Due	$ 49,039.00
Interest	18,317.00
Penalty at 35%	17,164.00
Total due per audit	$ 84,520.00

Petitioner sold 184 of the 265 units in Riverside Park Apartments to Metropolitan Associates Limited Partnership ("MALP") in bulk in a transaction which qualified as a partial mere change of identity to the extent of 18.49% because certain partners in petitioner also had an interest in MALP. As a result, the Division reduced total liability shown above of $56,441.00 by $7,402.00 for a balance asserted due of $49,039.00.

Another schedule, a so-called "CACIC Sheet", dated June 11, 1987, which perhaps is an abbreviation for computation of acquisition, capital improvements and conversion costs (apparently prepared by the State's auditor), detailed the calculation of the original purchase price of $11,278,108.00 which was used above to compute "anticipated gain on taxable sale". This "CACIC Sheet" shows the following computation for original purchase price:

Acquisition		
Original cost per contract		$ 9,818,000.00
Lost rents (as per acquisition contract)		138,814.00
Legal fees		32,578.00
Commitment fee - Citibank		17,143.00
		$10,006,535.00
Capital Improvements		
Appliance Fund	$291,403.00	
Kitchens	209,194.00	
Bathrooms	170,284.00	
Plumbing	1,492.00	
Painting	107,892.00	
Elevator	2,700.00	
Flooring	4,235.00	
Electrical	1,305.00	
Glass	3,482.00	
Construction Period Interest	66,096.00	
		$ 858,083.00
Conversion Costs		
Printing	$ 10,912.00	
Filing Fees	7,275.00	
Inspection	539.00	
Title Insurance	29,380.00	
NYC Real Property Transfer Tax	246,825.00	

NYS Real Property Transfer Tax	10,800.00	
Mortgage Recording Tax	21,976.00	
Recording Fees	200.00	
Searches & Inspection	283.00	
Developers Fees (supervision and administration)	70,253.00	
Legal Fees	77,201.00	
Accounting Fees	3,942.00	
		$ 479,586.00
		$11,344,204.00
Disallowances: construction period interest		(66,096.00)
Total Original Purchase Price		$11,278,108.00

Another schedule, also apparently prepared by the State's auditor, detailed the computation of interest due to September 8, 1988 of $18,317.00 as follows:

	Tax	Interest
Bulk sale on 12/31/85		
34,554 shares x 1.5862 [sic]	$40,035.00	
	(7,402.00)	
	$32,633.00	$ 8,680.00
Apt. A13 7/7/86 to 9/8/88		
140 shares x 1.15862	162.20	45.00
Apt. F57 3/5/86 to 9/8/88		
251 shares x 1.15862	290.81	96.00
Apt. E35 4/15/85 to 9/8/88		
183 shares x 1.15862	212.03	109.00
Composite Date (all others) 12/1/84 to 9/8/88		
13,586 shares x 1.15862	15,741.00	9,387.00
	$49,039.04	$18,317.00

Although the auditor showed the use of 1.5862 per share in calculating the gain on the bulk sale of 34,554 shares, in fact he used the correct amount, 1.15862, to calculate $40,035.00 as the amount of tax due, before subtracting $7,402.00 which represented the mere change of identity (as noted above). The $7,402.00 was properly calculated by applying 18.49% (the percentage interest representing a mere change of identity) to 34,554 shares (the amount of shares transferred to MALP in the bulk sale) resulting in 6,389 taxable shares, which then multiplied by 1.15862 (the anticipated tax per share) equals $7,402.00.

Penalty of $17,164.00 was calculated as follows: $49,039.00 x .35 = $17,164.00.

Also attached to petitioner's Request for Conciliation Conference are photocopies of computer printouts showing the calculations for the amounts of interest shown above. For example, interest of $9,387.07 on tax due on the transfer of "all others" was calculated as follows:

Interest start date 12/1/84	
Interest end date 9/8/88	
Interest base $21,550.00 [sic]	
89 days at 11.0% from 12/1/84 to 2/28/85	$ 585.72
365 days at 11.8% from 2/28/85 to 2/28/86	2,771.82
365 days at 9.5% from 2/28/86 to 2/28/87	2,481.88
365 days at 7.5% from 2/28/87 to 2/28/88	2,132.87
192 days at 8.9% from 2/28/88 to 9/8/88	1,414.78
1,376 days total interest	$9,387.07

It is noted that the auditor utilized an incorrect interest base of $21,550.00 since 13,586 shares times 1.15862 (the correct anticipated tax per share, not 1.5862) equals $15,741.01. Similarly, the interest calculations for the transaction involving the sale of Apt. A13, Apt. F57 and Apt. E35 are incorrect because they too used an incorrect interest base.

The Division submitted into the record a document labeled "Closing Statement Cooperative Conversion of Riverdale Park Apartments, Riverdale, New York Prepared for Riverdale Park Corp." which was numbered "16".[1] Since this particular matter is representative of all ten matters, the following description of "The Transaction" in this closing statement establishes the pattern followed by petitioner in these ten projects involving the conversion of apartments into cooperative housing units:

> "In connection with the conversion to cooperative ownership of the premises known as Riverdale Park Apartments, Riverdale, New York (the 'Premises'), Sponsor [petitioner], as contract vendee pursuant to a contract dated as of June 15, 1982 with Riverdale Park Associates, directed that fee title to the Premises be conveyed directly to the Apartment Corporation [Riverdale Park Corp.] by Riverdale Park Associates by bargain and sale deed . . . dated May 3, 1984.

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[1] By a letter dated January 5, 1993, the Division submitted 173 documents which were numbered sequentially. Although described as "the jurisdiction documents for these cases," they are much more than that, and few other documents were submitted. Attached to the briefs submitted by petitioner are mostly additional copies of various documents previously transmitted by the Division. In fact, it appears that, except for an occasional copy of a notice and demand, no additional documents were filed by petitioner.

"The closing of title to the Premises with the Apartment Corporation occurred [sic] concurrently with the closing of title with the Sponsor. Certain documents, as well as the deed, were delivered directly to the Apartment Corporation from Riverdale Park Associates.

"The purchase price for the Premises paid to the Sponsor by the Apartment Corporation included the following:

"(a) the aggregate cash proceeds obtained by the Apartment Corporation in connection with the sale of its shares to individual purchasers as of May 3, 1984 pursuant to individual subscription agreements (6,579 shares sold for a total of $1,069,504) less the working capital fund retained at the closing by the Apartment Corporation (the 'Working Capital Fund'), and less additional offering expenses incurred in connection with the sales and closing (including printing and advertising expenses, professional and legal fees, offering plan registration fees, broker's fees, gains tax and transfer tax expenses, marketing fees and title expenses), as provided for in the Contract of Exchange between Sponsor and Apartment Corporation dated as of June 15,

1982 and as amended by Supplemental Agreement dated as of May 3, 1984 (the 'Contract') and

"(b) the Unsold Shares (42,135 shares valued at $8,138,119.25) and their appurtenant proprietary leases; and

"(c) the Apartment Corporation taking subject to a purchase money mortgage on the closing date with Sponsor in the principal amount of $3,500,000.00 (the 'Mortgage').

"As set forth in the letter of the Selling Agent [M. J. Raynes, Inc.] containing the calculations used to determine the total consideration received by Sponsor . . . but without taking any offering expenses into account, the aggregate value of the consideration received by Sponsor for items (a) and (b) above, was calculated to be $9,207,623.25. However, the total consideration received by Sponsor for the purposes of obtaining title insurance was calculated to be $13,000,000 based on the gross cash proceeds obtained by the Apartment Corporation in connection with the sale of its shares, the value of the Unsold Shares and the principal amount of the Mortgage. The New York City Real Property Transfer Tax Return was calculated to be $246,825.07 based upon the price in the Riverdale Park Associates - Belhara Associates Limited Partnership contract.

"The transaction was closed in accordance with the provisions of the Offering Plan--A Plan To Convert to Cooperative Ownership Premises known as Riverdale Park Associates, Riverdale, New York, dated November 12, 1982, (the 'Plan') as amended by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Amendments thereto."

It is observed that the closing took place at the offices of Robinson, Silverman, Pearce, Aronsohn & Berman, the law firm representing Riverdale Park Associates, and that Messrs. Arnold Goldstein, Sam Goldstein and John Bianco appeared on behalf of the partnership,

Riverdale Park Associates.[2] It is noted that the same law firm, Robinson, Silverman, Pearce, Aronsohn & Berman, by attorney Matthew Klein, represented the cooperative housing corporation, Riverdale Park Corp.

Included in the record is a transferor questionnaire, Form TP-580, dated April 18, 1984, which was submitted by Riverdale Park Associates, c/o Samsom Management, 97-77 Queens Boulevard, Rego Park, New York, for the transfer of fee title to Riverdale Park Corp., the cooperative housing

corporation. Riverdale Park Associates noted that consideration for the transfer was $1,000,000.00 or more, but claimed exemption from gains tax for two reasons: (1) under Tax Law § 1443.6 because the contract was entered into prior to March 29, 1983 (the effective date of the gains tax law) and (ii) "[i]nitial transfer-conversion to cooperative housing."

Also included in the record is a transferor questionnaire, Form TP-580, dated May 16, 1984, which was submitted by petitioner for the transfer of ownership of 57 of the 265 cooperative units included in the Riverdale Park Apartments conversion project. Petitioner reported no "anticipated tax due" on a loss of $2,202.00 calculated as follows:

Gross consideration to be paid for transfer by transferee[3]	$2,624,385.00
Brokerage fees to be paid by transferor	115,096.00
Consideration	2,509,289.00
Purchase price paid to acquire real property	2,062,584.00
Cost of capital improvements to real property	448,907.00
Original purchase price	2,511,491.00
Loss ($2,511,491.00 less $2,509,289.00)	$ 2,202.00

An Exhibit "A" attached to the questionnaire showed the following allocation between the 57 units reported as having been transferred by petitioner and the remaining 208 units:

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[2]The sales agreement indicated that Sam Goldstein, Arnold Goldstein, SLA Realty Corp. by Arnold Goldstein, Lilarn Properties, Inc. by Arnold Goldstein and Sam Goldstein, as executor of the Estate of Lillian Goldstein were the "Sellers" (i.e., the partners of Riverdale Park Associates).

[3]This transferor questionnaire referenced "[a]ttached forms TP-581 (5/83)" which were not included in the document submitted. An Exhibit "A" attached to the questionnaire listed 57 transferees, the particular unit purchased, percentage interest, date of purchase agreement (ranging from March 20, 1983 to March 31, 1984), gross consideration (ranging from $26,703.00 to $80,376.00), brokerage fees and various items allocated to the particular units, including purchase price to acquire, cost of capital improvements, original purchase price and gain subject to tax.

	57 Transferred Units	208 Remaining Units	Grand Totals
Percentage	.201749 (taxable)	.798251 (nontaxable)	1.000000
Gross consideration	$2,624,385.00	$10,383,784.00	$13,008,169.00
(Less) Brokerage fees	115,096.00	455,394.00	570,490.00
Consideration	$2,509,289.00	$ 9,928,390.00	$12,437,679.00
Purchase price to acquire	2,062,584.00	8,160,932.00	10,223,516.00
(Plus) Cost of capital improvements	448,907.00	1,776,169.00	2,225,076.00
Original purchase price	$2,511,491.00	$ 9,937,101.00	$12,488,592.00

An Exhibit "B" attached to the questionnaire showed the following computation of "purchase price paid to acquire real property":

Acquistion	$ 9,818,000.00
Mortgage costs and fees	17,143.00
Attorney's fees	35,703.00
Title costs and fees	15,000.00
Closing costs	337,670.00
Total purchase price paid to acquire real property	$10,223,516.00

Exhibit "B" referenced a so-called "Exhibit E, copy of June 15, 1982 'Agreement of Sale of Partnership Interest . . ." for the acquisition cost reported of $9,818,000.00. This document was submitted by the Division as "13". A complex document, it provided as follows with regard to petitioner's purchase price for Riverdale Park Apartments:

> "Sellers [Riverdale Park Associates] hereby agree to sell to Buyer [petitioner] and Buyer hereby agrees to purchase from Sellers all of the Partnership Interests on the Closing Date for an aggregate purchase price of $9,818,000.00, (the 'Initial Purchase Price') less title, transfer and recording fees, taxes and stamps, title charges, including without limitation title insurance premiums and survey costs, real property transfer taxes, mortgage and any other recording taxes and fees and the New York State Stamp Tax on Deeds and any other fees, charges or assessments necessary to consummate this transaction, other than legal fees, payable at the Closing, up to the amount of such charges based on a consideration of $9,818,000, and further adjusted as provided in Articles 11 [Closing Adjustments] and 15 [Further Actions Pending Closing] hereof (such price, as adjusted, to be referred to herein as the 'Purchase Price') and on the other terms and conditions set forth in this Agreement."

An Exhibit "C" attached to the questionnaire showed the following calculation of "total cost of capital improvements":

Conversion period interest	$ 423,534.00

Conversion period taxes	66,085.00
Reserve fund for capital improvements	1,000,000.00
Printing, etc. (Plan)	10,940.00
Professional fees	62,702.00
Selling expenses	19,422.00
Apartment renovations (construction)	665,684.00
Appliance fund	300,000.00
Filing fee	10,225.00
	$2,558,592.00
Less: conversion period income (excluding interest and taxes)	(333,516.00)
Total cost of capital improvements	$2,225,076.00

An Exhibit "F" attached to the questionnaire showed the following calculation of gross consideration of $13,008,169.00:

Total anticipated cash portion of purchase price for shares	$ 9,508,169.00
Amount of purchase money mortgage	3,500,000.00
	$13,008,169.00

The $9,508,169.00 was "[b]ased upon actual sales prices of units for which purchase agreements have been executed [presumably 57 units] and accepted and current prices for unsold units [presumably 208 units]."

An Exhibit "H" attached to the questionnaire showed the anticipated cash portion of purchase price for 265 units totalling $9,508,169.00. It is observed that this amount corresponds to the gross consideration shown on Exhibit "A" of $2,624,385.00 for the 57 transferred units and $10,383,784.00 for the 208 remaining units (totalling $13,008,169.00) because the cash portion of $9,508,169.00 plus the amount of the purchase money mortgage of $3,500,000.00 also totals $13,008,169.00. It is noted that the amounts used on Exhibit "H" for anticipated cash portion of purchase price are substantially lower than the amounts shown on the "Schedule of Purchase Prices and Share Allocations", included in the Cooperative Offering Plan for Riverdale Park Apartments introduced into the record on submission by the Division as "17". Furthermore, Exhibit "A" attached to the questionnaire shows a total gross consideration for the 57 units transferred at the closing of $2,624,385.00 with specific amounts shown for each of the 57 units transferred which are substantially higher than the amounts shown for such units on Exhibit "H". For example, unit A24 was sold to a transferee named Tocco for

$57,145.00 according to Exhibit "A", while on Exhibit "H" petitioner showed $36,059.00 as the "anticipated cash portion of purchase price" for this unit.

As noted above, the transaction involving the conversion of Riverdale Park Apartments, which has been described in detail, is representative of all ten matters. The other nine matters involved the similar pattern: petitioner directing that fee title to the respective premises be conveyed directly to the respective cooperative housing corporation pursuant to an earlier sales agreement with an entity that was the owner of the premises. As a result, the remaining nine transactions will be described in less detail. Initially, certain relevant facts may be summarized as follows:

DTA #	Project	Original[4] Property Owner	Date of Sales Agreement Between Petitioner and Original Property Owner	Purchase Price[5] Specified in Sales Agreement
807917	67-76 Booth St. Forest Hills, NY	67-76 Booth St. Associates consisting of Sam Goldstein, Arnold Goldstein and Arlene Goldstein	June 15, 1982	$3,100,000.00
807918	625 Gramatan Ave. Mount Vernon, NY	Mikeadam Realty Corp. by Sam Goldstein	June 15, 1982[6]	$3,484,581.00
807919	280-290 Collins Ave. Mount Vernon, NY	Mikeadam Realty Corp. by Sam Goldstein	June 15, 1982	$5,280,650.00

[4] All of the original property owners were related in some fashion to Samson Management, a New York partnership, which may be a play on the name of Sam Goldstein.

[5] All of the sales agreements in the record provided that the purchase price was to be decreased by the same expenses noted above for the Riverdale Park Apartments.

[6] The same sales agreement applied to the properties involved in DTA Numbers 807918 and 807919. A third property located at 280 Bronxville Road, Yonkers, New York also covered by this agreement was not petitioned herein.

809573	110-150 Draper Lane Dobbs Ferry, NY	--[7]	June 15, 1982	$3,163,562.00
809574	63-33 98th Place Rego Park, NY	63-33 98th Place Associates	June 15, 1982[8]	$4,537,058.00
809575	Boulevard Apartments Bayside, NY	Boulevard Apartments Associates consisting of Arnold Goldstein, and Arnold Goldstein as trustee of eight different trusts and Scott David Goldstein	June 15, 1982	$9,970,000.00

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[7] A sales agreement between petitioner and the original property owner was not included in the documents submitted. A document numbered "101," "Closing Statement Cooperative Conversion of 110-150 Draper Lane, Dobbs Ferry, New York," referencing a closing held on May 17, 1984, indicated that:

> "there were appearances by Brian B. Smith, Esq. of Robinson, Silverman, Pearce, Aronsohn & Berman, attorneys for Draper Lane Associates, Seller, a New York general partnership and by Arnold Goldstein and John Bianco of Samson Management, on behalf of said partnership . . . in connection with the transfer of the premises known as 110-150 Draper Lane, Dobbs Ferry, New York by Draper Lane Associates to the Apartment Corporation at the direction of the Sponsor."

Consequently, it is reasonable to find that the original property owner was also a Goldstein family entity of some sort. In addition, it is reasonable to assume that the purchase price specified in the sales agreement was used by the Division in calculating its audited original purchase price of $3,203,439.00 which on a document numbered "94" shows an audited acquisition cost of $3,163,562.00 based on $2,210,000.00 plus $914,581.00 (described as "liability") plus $38,981.00 (described as "lost rent"). Therefore, $3,163,562.00 was used above as the "purchase price specified in sales agreement."

[8] As in DTA Number 809753, the sales agreement was not introduced. It is reasonable to assume that this sales agreement, like nearly all the others, was dated the same date since 63-33 98th Place Associates also appears to be a Goldstein family entity. The $4,537,058.00 was determined to be the "purchase price specified in sales agreement" in a similar fashion to the one described in footnote "7."

809576	23-25 and 23-35 Bell Bouleavard Bayside, NY	Mikeadam Realty Corp., a Goldstein family entity	October 28, 1982	--[9]
809577	Bell Apartments	Bell Apartments Associates, a Goldstein family entity	June 15, 1982	--[10]
809616	3616 Henry Hudson Pkwy. Riverdale, NY	3616 Henry Hudson Parkway Associates consisting of Sam Goldstein, Arnold Goldstein, Arnold Goldstein as trustee and Arlene Goldstein	June 15, 1982	$4,620,000.00

BULK SALES OF UNSOLD UNITS

Submitted into the record as a document numbered "36" is an "Amended and Restated Purchase Agreement", dated December 30, 1985, between petitioner and Metropolitan Associates Limited Partnership. It is observed that Martin J. Raynes and Charles Hack executed this document on behalf of petitioner, and Jerome I. Gellman, Charles Hack and James B. Mintzer executed the document on behalf of MALP. The purchase price for the sale of petitioner's unsold shares at seven of the ten projects at issue[11] was allocated as follows:

DTA #	Project	Allocation of Purchase Price
807916	Riverdale Park Apartments	$6,035,213.00 (34,554 shares at $174.66 per share)
807917	67-76 Booth Street	$2,474,348.00 (14,639 shares at $169.02 per share)
809574	63-33 98th Place	$3,117,035.00 (26,900 shares at $115.87 per share)
809575	Boulevard Apartments	$3,149,170.00 (27,110 shares at $116.16 per share)

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[9] Petitioner did not raise the issue designated "I" with regard to this particular matter, which may explain why the "purchase price specified in sales agreement" is not clearly set forth in the record.

[10] Like the situation described in footnote "9," petitioner did not raise the issue designated "I."

[11] A project at 3050 Fairfield Avenue, Riverdale, New York was also covered by this bulk sale agreement but is not at issue herein.

809576	23-25/35 Bell Boulevard	$1,194,320.00[12] (11,075 shares at $107.84 per share)
809577	Bell Apartments	$8,606,659.00 (74,435 shares at $115.63 per share)
809616	3616 Henry Hudson Parkway	$2,883,168.00 (29,378 shares at $98.14 per share)

The purchase price for the sale of petitioner's interest as lessee under certain parking leases was also allocated:

DTA #	Project	Allocation of Purchase Price for Parking Spaces
807916	Riverdale Park Apartments	$23,140.00 (52 spaces at $445.00 each)
807917	67-76 Booth Street	$3,560.00 (8 spaces at $445.00 each)
809574	63-33 98th Place	$27,145.00 (61 spaces at $445.00 each)
809575	Boulevard Apartments	$24,920.00 (56 spaces at $445.00 each)
809576	23-23 & 23-35 Bell Blvd.	$8,455.00 (19 spaces at $445.00 each)
809577	Bell Apartments	$88,110.00 (198 spaces at $445.00 each)

Apparently no parking spaces were sold at 3616 Henry Hudson Parkway (DTA Number 809616).

This "purchase agreement" provided that only $57,891.00 was "to be paid in cash . . . ." Petitioner allocated $11,972.00 of this cash amount to Riverdale Park Apartments. It is noted that the total purchase price for all of the units and parking spaces in issue sold under this agreement was $27,635,243.00 and the portion allocable to Riverdale Park Apartments is $6,058,353.00.

Submitted into the record as a document numbered "57" is a copy of a "Contract of Sale - Cooperative Apartment" dated September 26, 1985 between petitioner and Charles Hack, James B. Mintzer, Martin J. Raynes, Robert B. Stang, William A. Wiener, Frederic D. Heller, Richard B. Adelman, Henry Bunis and Phyllis Ostrofsky, as tenants-in-common, having an address as c/o MJR (perhaps an abbreviation for Martin J. Raynes) Development Corp. for the sale of petitioner's unsold shares at the other three projects at issue for an allocated purchase price as set forth in a Schedule "B" to the contract as follows:

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[12] This amount also appears to include units located at 23-45/55 Bell Boulevard which was not included in the petition covering DTA Number 809576.

DTA #	Project	Allocation of Purchase Price
807918	625 Gramatan Avenue	$1,982,976.00
807919	280-290 Collins Avenue	2,268,028.00
809573	110-150 Draper Lane	1,161,241.00

It appears that Martin J. Raynes and Charles Hack executed this contract on behalf of petitioner.

67-76 Booth Street, Forest Hills, New York

In DTA Number 807916, Riverdale Park Apartments, petitioner has raised each of the issues designated one through seven at the start of this determination. The facts have been detailed with reference to this project so as to resolve such issues by use of this representative matter. A review of the other nine matters reveals only one additional issue which was not raised in DTA Number 807916. DTA Number 807917, 67-76 Booth Street, Forest Hills, New York, will be used as a representative matter to resolve the issue designated as eight at the start of this determination. Facts necessary to resolve such issue are as follows.

We modify finding of fact "17" of the Administrative Law Judge's determination to read as follows:

> The sale of three units representing 587 shares in Booth Street Owners Corp., the cooperative housing corporation, were "grandfathered" and not subject to the imposition of gains tax. 27,527 shares representing 125 units were, according to the Division, subject to tax. Expenses, as shown on petitioner's transferor questionnaire, were apparently apportioned to the grandfathered units based upon a fraction where actual consideration paid for the grandfathered units was the numerator and total consideration to be received, including actual amounts and estimated amounts, was the denominator. The Division, in its computation, apportioned expenses to the grandfathered units based upon a fraction where the number of shares allocated to the grandfathered units was the numerator and the total number of shares of the cooperative housing corporation was the denominator.[13]

In a letter dated August 20, 1993 from Andrew J. Zalewski, the Division's representative, to the Administrative Law Judge, Mr. Zalewski, responding to certain allegations in petitioner's reply briefs, noted:

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[13] Finding of Fact "17" of the Administrative Law Judge's determination was modified by adding the phrase "as shown on petitioner's transferor questionnaire" to the third sentence and also by adding the last sentence. This modification was made to reflect the record in greater detail.

> "I am very concerned with the petitioner's various comments that suggest that our office was previously provided with a variety of documents to substantiate various items of expense . . . . After reviewing the Department's files I am fairly certain that none of the loan documents or documents for the amounts claimed to have been paid were ever forwarded to the Law Bureau by the taxpayer's representative for . . . matters submitted . . . . Furthermore, there has been no stipulation of facts prepared that addresses any issue raised by the taxpayer."

It is observed that although the record on submission herein consists of hundreds of pages, there is no documentation for any items of expense claimed by petitioner on the projects at issue which were disallowed by the Division. In fact, without testimony or even the submission of affidavits, the complex transactions at issue have been very difficult to decipher. Furthermore, petitioner has greatly confused the record by submitting multiple copies of documents (e.g., a document numbered "57" is the same as an Exhibit "4" to petitioner's brief concerning DTA Number 807919 and Exhibit "4" to petitioner's brief concerning DTA Number 809573) and repetitious briefs that fail to clearly set forth how issues in one matter are the same or vary from other matters.

In the following six matters, the respective statutory notices at issue were sustained by the conciliation conferee: DTA Numbers 807916, 807917, 809573, 809575, 809576 and 809616. However, in the remaining four matters, the conciliation conferee reduced gains tax asserted as due as follows:

DTA #	Gains Tax Asserted Due in Notice of Determination	Tax, as Reduced by Conferee
807918	$ 19,592.00	$ 14,563.00
807919	35,072.00	30,177.00
809574	69,914.00	63,566.18
809577	470,589.00	463,293.79

In each matter where tax was reduced, petitioner substantiated additional capital improvement expenses (apparently certain model apartment expenses).

OPINION

The Administrative Law Judge concluded that Belhara was not entitled to step-up its original purchase price to the fair market value of the property on the date of its transfer to the cooperative housing corporation. The Administrative Law judge recognized that to allow a

step-up in original purchase price would require that the conversion be viewed as two separate transactions and that this construction is contrary to existing case law.

Second, the Administrative Law Judge held that the Division properly included the wraparound mortgage in calculating consideration and that said mortgage could not be considered as grandfathered consideration.

Third, the Administrative Law Judge concluded that the Division's denial of a step-up in original purchase price and grandfathering of the mortgage did not violate petitioner's rights under the equal protection clauses of the New York State and United States Constitutions.

Fourth, the Administrative Law Judge upheld the Division's disallowance of conversion period interest, conversion period real property taxes and advertising and promotional fees in calculating original purchase price. The Administrative Law Judge, relying on Matter of V & V Props. (Tax Appeals Tribunal, July 16, 1992), held that the amendment to Tax Law § 1440(5)(a) (L 1984, ch 900, § 3, eff September 4, 1984) was a substantive change to be applied prospectively only. Since the ten projects at issue predate the amendment to Tax Law § 1440(5)(a), the Administrative Law Judge concluded that the expenses in question were not allowable. The Administrative Law Judge also held that petitioner had failed to offer any evidence to explain and document the expenses.

Fifth, the Administrative Law Judge found that petitioner was not entitled to pay the gains tax due on an installment basis since it had failed to properly elect installment payments pursuant to Tax Law former § 1442. Furthermore, the Administrative Law Judge concluded that the record did not contain sufficient evidence to show that petitioner qualified to pay the tax by installments.

Sixth, the Administrative Law Judge held that the Division properly calculated interest from the date of transfer in that petitioner failed to qualify for installment payments and had also failed to establish that it timely elected the Option B method of calculating tax due.

Seventh, the Administrative Law Judge concluded that petitioner did not establish that its failure to pay the proper tax was due to reasonable cause and not willful neglect and he, therefore, sustained the imposition of penalty.

Finally, the Administrative Law Judge upheld the Division's allocation of gain between the units subject to tax and the grandfathered units. The Administrative Law Judge noted that petitioner failed to elect any method of reporting (i.e., then available Option A or Option B) and that it, therefore, lost its entitlement to choose either of the two options. The Administrative Law Judge accepted the Division's calculation which used actual prices for units sold as of the date of the audit, calling it "an Option B approach updated to current amounts."

On exception, petitioner asserts that: (1) the Division must use the fair market value of the property on the date it was sold by petitioner to the cooperative housing corporation in computing the original purchase price because the Division would do so if the real property had been transferred to an entity other than a cooperative housing corporation prior to March 28, 1983; (2) the Division must treat mortgages created pursuant to a binding written agreement executed prior to March 28, 1983 the same way bargain leases created prior to March 28, 1983 are treated when determining consideration on the subsequent sale of stock in the cooperative housing corporation; (3) the Division's refusal to (i) step-up the original purchase price to fair market value on the date of the transfer to the cooperative housing corporation and (ii) treat mortgages the same as bargain leases in determining consideration, is violative of both the United States and New York State Constitutions; (4) conversion period interest, conversion period real property taxes and advertising and promotional fees are customary, reasonable and necessary expenses incurred to create ownership interests in cooperative form and, as such, are properly includible in original purchase price; (5) it sustained its burden of proving entitlement to pay any gains tax due on the installment basis; (6) it was improper for the Division to compute interest from the date of transfer since it had elected Option B and, under Option B, no interest can be charged on units sold prior to the required update filing based on a difference between actual consideration received and the originally estimated consideration; (7) penalties

and penalty interest should be abated because (i) it voluntarily and timely filed the questionnaires reporting the transfers in connection with the conversion of the property; (ii) its computation of gains tax due as reported on its questionnaires was made in good faith and was based upon a reasonable interpretation of the Tax Law; and (iii) its representative had periodic discussions with Division personnel concerning gains tax filings and it was reasonable for petitioner to rely on its representative's comments and direction; and (8) for purposes of allocating gain to taxable units the taxable gain is the overall project gain divided by the total number of shares in the property and then multiplied by the total number of shares allocable to the taxable units.

We affirm the determination of the Administrative Law Judge.

We first address the issue of whether the Division must step-up the original purchase price of the property to its fair market value at the time of its transfer to the cooperative housing corporation.

Petitioner argues that the Division must use the fair market value of the property on the date it was sold by petitioner to the cooperative housing corporation in computing the original purchase price because the Division would do so if the property had been transferred to an entity other than a cooperative housing corporation prior to March 28, 1983. We reject petitioner's contentions.

To begin with, it is well settled that a cooperative conversion is treated as a single transaction for purposes of applying the gains tax (Mayblum v. Chu, 109 AD2d 782, 486 NYS2d 89, mod 67 NY2d 1008, 503 NYS2d 316; Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin., 170 AD2d 842, 566 NYS2d 957, lv denied 78 NY2d 859, 575 NYS2d 455). Allowing petitioner to step-up its original purchase price of the property to its fair market value at the time of transfer would have the effect of treating the cooperative conversion as two transactions, i.e., the transfer to the cooperative housing corporation and the transfers of shares to individual unit purchasers, instead of one (Matter of 470 Newport Assocs., Tax Appeals Tribunal, September 2, 1993). Furthermore, it is of no significance that the

property was transferred to the cooperative housing corporation pursuant to a contract entered into prior to March 28, 1983 (the effective date of the gains tax), for it is the transfer of shares to unit purchasers which is the taxable event, and not the transfer to the cooperative housing corporation (Mayblum v. Chu, supra, 503 NYS2d 316, 317).

We have already considered and rejected the argument that the Division is required to tax transfers to cooperative housing corporations in the same manner as transfers to other types of entities. In Matter of 61 East 86th St. Equities Group (Tax Appeals Tribunal, January 21, 1993), we stated:

> "[a]s we noted in 1230 Park, Article 31-B has a number of provisions that single out transfers pursuant to a cooperative or condominium plan for treatment different from that applied to other types of transfers. In our view, these provisions, contained in former sections 1440(7), 1442, and section 1443(6), provide ample support for the Division's decision to tax transfers pursuant to a cooperative plan like transfers pursuant to a condominium plan and, as a result, to treat cooperative corporations differently from non-cooperative corporations" (Matter of 61 East 86th St. Equities Group, supra; see also, Matter of 470 Newport Assocs., supra).

Next, petitioner argues that the Division must treat mortgages created pursuant to a binding written agreement executed prior to March 28, 1983 the same way it treats bargain leases created prior to such date when determining consideration on the subsequent sale of the stock. Petitioner contends that since it received the mortgage pursuant to a binding agreement executed prior to March 28, 1983, the consideration attributable to such mortgage should be grandfathered. We disagree.

A mortgage, whether created prior or subsequent to the effective date of the gains tax, is treated by the Division as consideration only on that portion of the mortgage allocated to shares sold after the effective date of the gains tax, pursuant to contracts entered into after such date. This treatment of a mortgage as consideration was sustained by the Court in Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin. (supra).

We find no merit to petitioner's contention that the Division must treat pre-gains tax mortgages the same as pre-gains tax bargain leases. The Division's decision to treat no portion of a pre-gains tax bargain lease as taxable consideration is not inconsistent with the Division's

treatment of mortgages because they are two very different types of encumbrances (Matter of 470 Newport Assocs., supra), and the Division's treatment reflects these differences. Among the differences is the fact that a mortgage encumbers each individual unit while a bargain lease does not.

Furthermore, even if petitioner were to persuade us that bargain leases and mortgages were to be treated the same, i.e., allocated to all units, petitioner has not attempted to explain why the pre-gains tax mortgage should be treated like the pre-gains tax bargain lease, instead of vice versa.

Petitioner next argues that the Division's refusal to step-up original purchase price to fair market value on the date of transfer to the cooperative housing corporation and its different treatment of mortgages as compared to bargain leases violates the Equal Protection Clause of both the United States and New York State Constitutions. We disagree.

With respect to petitioner's constitutional challenges regarding cooperative corporations as compared to other entities, as we noted earlier, Article 31-B of the Tax Law was designed to treat cooperative housing corporations differently than other entities (Matter of 61 East 86th St. Equities Group, supra). The different tax treatment accorded cooperative housing corporations:

> "enjoys a presumption of constitutionality which 'can only be overcome by the most explicit demonstration that [the] classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it' [citations omitted]" (Trump v. Chu, 65 NY2d 20, 489 NYS2d 455, 458-459, appeal dismissed 474 US 915).

Petitioner has not carried its burden in light of the Court of Appeals' decision upholding the different gains tax treatment of cooperative and condominium developments compared to subdivided realty in Trump v. Chu (supra).

Turning next to petitioner's equal protection argument concerning the Division's different treatment of mortgages and bargain leases, we find no merit to petitioner's assertion that the distinction drawn by the Division between mortgages and bargain leases violates the Equal

Protection Clause of either the New York State or United States Constitution (see, Matter of National Elevator Indus. v. New York State Tax Commn., 49 NY2d 538, 427 NYS2d 586).

Petitioner's next argument concerns whether conversion period real property taxes, conversion period interest and advertising and promotional fees are includible in original purchase price. Petitioner argues that said costs, pursuant to Tax Law § 1440(5)(a), are customary, reasonable, and necessary expenses incurred to create ownership interests in cooperative form. We disagree.

With respect to conversion period real property taxes and conversion period interest, we have addressed this same argument in Matter of 44 West 62nd St. Assocs. (Tax Appeals Tribunal, August 11, 1994) where we held that:

> "conversion period interest and conversion period real property taxes are not costs incurred to create ownership interests in cooperative form. These costs are merely expenses incurred to carry the property and not incurred to create ownership interests in the property (Matter of Mattone v. State Dept. of Taxation & Fin., 144 AD2d 150, 534 NYS2d 478). We direct petitioner's attention to our decision in Matter of 1230 Park Assocs. (Tax Appeals Tribunal, July 27, 1989, affd Matter of 1230 Park Assocs. v. Commissioner of Taxation & Fin., 170 AD2d 842, 566 NYS2d 957) where we stated the test was whether the cost 'can be characterized as an expense incurred to create ownership in the cooperative form.'"

The same reasoning stated above applies equally to the claimed advertising and promotional fees. Furthermore, whether petitioner has provided documentation substantiating the claimed expenses for conversion period interest, conversion period real property taxes and advertising and promotional fees and whether original purchase price should be computed under the provisions of Tax Law former § 1440(5) or pursuant to Tax Law § 1440(5)(a) as amended by the Laws of 1984 (ch 900, § 3, eff September 4, 1984) is of no consequence to our decision since, as discussed, conversion period interest, conversion period real property taxes and advertising and promotional fees are not expenses properly includible in original purchase price for purposes of calculating the gains tax.

Turning next to the issues concerning whether petitioner is entitled to pay any gains tax on the installment basis; whether the Division incorrectly computed interest; and whether petitioner has established reasonable cause for the abatement of penalty, we find that the

Administrative Law Judge completely and correctly decided these three issues in conclusions of law "G," "H" and "I" of his determination. We, therefore, uphold the determination of the Administrative Law Judge with respect to these three issues for the reasons stated therein.

Finally, we address whether the Division properly calculated gain and tax due on audit. On audit, the Division calculated gain and tax due using the actual consideration received on the units subject to tax plus the pro-rata portion of the mortgage allocated to such units minus the pro-rata portion of the original purchase price allocated to the taxable units. Petitioner argues that since the gains tax treats the cooperative conversion as a single transaction, the overall project gain should be allocated on a per-share basis for determining gain subject to tax under Option B. In essence, petitioner asserts that all unit transfers, including grandfathered transfers, be counted in calculating gain per share and the gain per share be multiplied by the number of shares subject to tax. We disagree.

Prior to August 1986, there were two methods of calculating gains tax liability upon transfers of cooperative apartment units, Option A and Option B (see, TSB-M-83-[2]-R). Under Option A, gain was computed based on the actual consideration received less the pro-rata portion of original purchase price allocated to each unit. Under Option B, a taxpayer can elect, prior to the time it starts making taxable sales, to estimate the consideration to be received on all future sales. Here, petitioner has not shown that it properly elected to compute its gains tax liability under Option B. Moreover, even if petitioner had properly elected to compute its gains tax liability under Option B, it has not provided us with any support for the proposition that, under Option B, gain per share is computed based on the total project gain (net of grandfathered and non-grandfathered shares) and then allocated to the non-grandfathered shares to compute tax due. We find that the Division's computational method which includes only the consideration received on taxable units is reasonable. Such method is in harmony with determining whether the cooperative conversion is taxable based on whether consideration anticipated on taxable units alone reaches the $1,000,000.00 threshold.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Belhara Associates Limited Partnership is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petitions of Belhara Associates Limited Partnership are granted to the extent that interest must be recalculated due to the use of incorrect interest base; and

4. The ten notices of determination, as adjusted by conciliation orders and modified by paragraph "3" above, are sustained.

DATED: Troy, New York
January 26, 1995

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner