

STATE OF NEW YORK
DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ARTA, INC.	:	DETERMINATION
for Revision of a Determination or for Refund	:	DTA NO. 811221
of Real Estate Transfer Tax under Article 31	:	
of the Tax Law.	:	

Petitioner, Arta, Inc., 97-12 63rd Drive, Rego Park, New York 11374, filed a petition for revision of a determination or for refund of real estate transfer tax under Article 31 of the Tax Law.

A hearing was held before Dennis M. Galliher, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on July 27, 1993 at 4:45 P.M. Petitioner appeared by its president, Djalil Bassaly. The Division of Taxation appeared by William F. Collins, Esq. (Donald C. DeWitt, Esq., of counsel). Neither party reserved time within which to file a post-hearing brief.

ISSUE

Whether petitioner owes real estate transfer tax with respect to its July 26, 1989 transfer of certain premises located in Great Neck Plaza, New York.

FINDINGS OF FACT

Petitioner, Arta, Inc., was the sponsor and selling agent for condominium units offered for sale pursuant to a condominium offering plan known as Parkview Condominiums. Parkview Condominiums was located at 237 Great Neck Road, Great Neck Plaza, New York, and consisted of 16 residential condominium units, plus 30 garage units. The approximate date of the first offering under the condominium plan was June 16, 1987.

As described at hearing, petitioner encountered financial difficulties with the sale of units such that as of July 1989 the mortgage outstanding on the premises was not being paid. In

addition, there also existed at the same time approximately \$50,000.00 of outstanding amounts owed to contractors for work performed at the premises.

On July 26, 1989, as a means of avoiding foreclosure and allegedly at petitioner's mortgagee bank's recommendation, petitioner conveyed fee interest in the entire condominium premises to Jaricato Corporation in exchange for Jaricato's assumption of certain outstanding liabilities including the outstanding mortgage, outstanding real estate taxes (see, infra), and future subcontractor liabilities. No cash was paid by Jaricato.

On August 11, 1989, a combined Real Property Transfer Gains Tax Affidavit/Real Estate Transfer Tax Return/Credit Line Mortgage Certificate (Form TP-584) was filed with respect to the above-described conveyance. Schedule C of said form indicates the amount of consideration for the conveyance to have been \$3,047,500.00. Line 2 of Schedule C indicates a claimed continuing lien deduction equal to the amount of consideration, therefore resulting in zero real estate transfer tax reported as due on such conveyance.

On April 9, 1990, the Division of Taxation ("Division") issued a Notice of Determination to petitioner assessing real estate transfer tax due on the above-described conveyance in the amount of \$12,190.00, plus penalty and interest.

Petitioner challenged the Notice of Determination arguing that the conveyance in question represented a salvage sale whereby the property was transferred with no equity received back by petitioner (i.e., the value of the property transferred was estimated as the outstanding mortgage amount of \$3,047,500.00). In fact, petitioner claims to have incurred a loss on transfer of the premises at least equal to the approximately \$50,000.00 owed to various contractors. Consequently, petitioner takes the position that no tax should be due. In addition, petitioner also argues that responsibility for payment of the tax in question should fall on either the attorneys and/or title companies who attended the closing of title, based upon the alleged failure of such parties to inform petitioner that transfer tax was due. Finally, petitioner argues that the contract of sale required the purchaser (as opposed to petitioner) to pay any and all real estate taxes due and owing with respect to the premises.

CONCLUSIONS OF LAW

A. Tax Law § 1402 provides as follows:

"A tax is hereby imposed on each deed at the time it is delivered by a grantor to a grantee when the consideration or value of the interest conveyed exceeds five hundred dollars, at the rate of two dollars for each five hundred dollars or fractional part thereof; provided, however, that with respect to (A) a conveyance of a one, two or three-family house and an individual residential condominium unit, or interests therein; and (B) conveyances where the consideration is less than five hundred thousand dollars, the consideration for the interest conveyed shall exclude the value of any lien or encumbrance remaining thereon at the time of sale."

B. Tax Law § 1401(d), in turn, provides that "consideration" means the:

"price actually paid or required to be paid for the real property or interest therein It shall include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to."

C. Tax Law § 1404(a) provides that:

"The real estate transfer tax shall be paid by the grantor. If the grantor has failed to pay the tax imposed by this article . . . or if the grantor is exempt from such tax, the grantee shall have the duty to pay the tax. Where the grantee has the duty to pay the tax because the grantor has failed to pay, such tax shall be the joint and several liability of the grantor and the grantee."

D. Consistent with the above-specified provisions of the Tax Law, the Division properly assessed real estate transfer tax against petitioner with respect to the transfer of the premises in question. Since the premises did not consist of a one, two or three-family house or an individual residential condominium unit, and since the consideration for the conveyance was in excess of \$500,000.00, petitioner's manner of filing and claiming a continuing lien deduction equal to the amount of consideration (i.e., the \$3,047,500.00 mortgage amount assumed) was properly rejected. Furthermore, the transfer resulted in petitioner receiving consideration in the form of relief from the mortgage obligation on the premises. The fact that petitioner received no resulting "equity" does not serve to exempt the transaction from imposition of real estate transfer tax (Tax Law §§ 1401[d]; 1402; 20 NYCRR 575.11). Finally, there is no basis upon which to relieve petitioner of its obligation to pay the tax upon the allegations that the grantee and/or other persons present at the time of closing and involved therein (title closers and/or

attorneys) should be obligated to pay the tax (Tax Law § 1404[a]).¹

E. Petitioner has advanced no argument or evidence which would warrant cancellation or reduction of the penalty imposed herein. Accordingly, such penalty is sustained.

F. The petition of Arta, Inc. is hereby denied and the Notice of Determination dated April 9, 1990 is sustained.

DATED: Troy, New York
September 16, 1993

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE

¹Petitioner's argument that the contract purchaser alone and not petitioner is obligated to pay the taxes in question is misplaced. First, a contract provision does not supersede the statutorily-imposed joint and several liability for the taxes at issue. Moreover, the specific contract provision relied upon (see, Contract of Sale, a part of Exhibit "B" at ¶ 28[B]) provides for the purchaser to assume liability "for all Real Estate Taxes and related Real Estate Tax Assessments and charges due . . . as shown as unpaid . . . [as of the closing date]." As the Division noted in its summary argument at hearing, the terms "Real Estate Taxes" and "Real Estate Tax Assessments" are not further defined (or specifically defined to include real estate transfer tax), and would appear to relate to outstanding property and school taxes owed by petitioner with respect to the premises as of the date of closing.