

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of

**THE BUFFALO BLUFFS, INC.**

:

DECISION

for Redetermination of a Deficiency **or** for  
Refund of Corporation Franchise Tax under  
Article 9-A of the Tax Law for the Years 1979 :  
and 1980.

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Petitioner, The Buffalo Bluffs, Inc., c/o George Grasser, 2100 Main Place  
Tower, Buffalo, New York 14202, filed a petition for redetermination **of** a  
deficiency or for refund of corporation franchise tax under Article 9-A of the  
Tax Law for the years 1979 and 1980 (File No. 58245).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the  
offices of the State Tax Commission, Part I, State Office Building, 65 Court  
Street, Buffalo, New York on December 4, 1985 at 2:45 P.M. Petitioner appeared  
by Bruce M. Zgoda, CPA. The Audit Division appeared by John P. Dugan, Esq.  
(Deborah J. Dwyer, Esq., of counsel).

#### ISSUES

I. Whether the petition was timely filed.

II. Whether, with respect to the computation **of** the tax based on business  
and investment capital, the Audit Division was correct in disallowing the  
deduction from petitioner's assets of a construction loan made to petitioner  
by Citibank, N.A.

#### FINDINGS OF FACT

1. **Petitioner, The Buffalo Bluffs, Inc., filed corporation franchise tax**  
reports for the years 1979 and 1980 showing minimum tax due.

2. On June 26, 1984, the Audit Division issued notices of deficiency for the years at issue, asserting deficiencies in tax of \$2,954.00 for 1979 and \$2,728.00 for 1980. The Audit Division recalculated petitioner's tax liability for each year according to the tax based on business and investment capital. The reason for the recalculation was the disallowance of petitioner's treatment as a current liability of a certain loan owing to Citibank, N.A. ("Citibank"), which disallowance resulted in an increase in capital.

3. On September 1, 1984, petitioner's representative wrote a note requesting a hearing on a copy of the Notice of Deficiency for the year 1979, and mailed same to the Department of Taxation and Finance. The note referred to the representative's earlier letter of May 4, 1984, in which he disagreed with the then proposed deficiencies.

4. In June, 1973, Citibank loaned petitioner the sum of \$2,000,000.00, which amount was subsequently increased to \$2,871,000.00. The loan was a construction loan, the purpose of which was to enable petitioner to acquire, develop and construct a residential project in Evans, New York. Repayment was to be made from the proceeds of the sale of the 102 units comprising the project. The precise terms of the loan are unknown and further details are not in evidence.

5. The project encountered severe market and financial problems and, after petitioner became delinquent, Citibank deemed the loan defaulted. The date of default does not appear in the record.

6. There is conflicting evidence in the record as to whether or not there was a mortgage and whether Citibank instituted foreclosure proceedings. However, in a letter dated November 21, 1985, Malcolm T. Kitson, Vice-president

of Citibank stated "(w)e are hopeful that we may continue to work with Buffalo Bluffs, Inc. so that we may realize some recovery of our loan".

7. Petitioner's argument is that the Citibank loan was at all times a current, on demand, obligation.

#### CONCLUSIONS OF LAW

A. That the note written by petitioner's representative dated September 1, 1984 constituted a valid and timely petition under section 1089(a) of the Tax Law.

B. That section 210.1 of the Tax Law imposes a corporation franchise tax on business corporations. During the years at issue, the tax was computed as follows: (a) a tax, based on (1) allocated entire net income, (2) allocated business and investment capital, (3) allocated entire net income and certain officer and shareholder salaries, or (4) a minimum tax of \$250.00, which ever was greater, plus (b) a tax based on allocated subsidiary capital. The issue here is whether the tax under section 210.1(a)(2), based on capital, or the minimum tax under section 210.1(a)(4), applies.

C. That the tax based on capital (section 210.1(a)(2) of the Tax Law) is "computed at one and seventy-eight hundredths mills for each dollar of (the corporation's) total business and investment capital, or the portion thereof allocated within the state...."

D. That section 208.7 of the Tax Law defines "business capital" as follows:

"7. The term "business capital" means all assets, other than subsidiary capital, investment capital and stock issued by the taxpayer, less liabilities not deducted from subsidiary or investment capital which are payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year . . .

of section two hundred ten of this chapter, cash on hand and on deposit shall be treated as investment capital or as business capital as the taxpayer may elect;".

E. That 20 NYCRR 3-4.3 defines "business capital" as follows:

"(a) the term business capital means the total average fair market value of all of the taxpayer's assets, (whether or not shown on its balance sheet), exclusive of stock issued by the taxpayer (treasury stock) or assets constituting subsidiary capital... or investment capital..., less certain liabilities. These liabilities include accounts payable, wages payable, accrued taxes, accrued expenses, accrued interest, notes and other written obligations if they are payable by their terms **on** demand or within one year from the dated incurred. Such liabilities are subtracted to the extent that they are not deducted in computing subsidiary capital or investment capital.

(b) the following liabilities are not deductible in computing business capital:

(1) notes and other written obligations payable by their terms on demand or not more than one year from the date incurred, which are renewed **so as** to be outstanding for more than one year as of any date during the year covered by the report;

(2) loans or advances outstanding for more than one year as of any date during the year covered by the report; and

(3) the current portions of long-term obligations..."

(Subsections (c), (d) and (e) have been omitted)

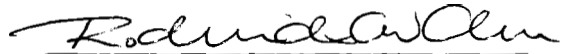
F. That the loan payable to Citibank was not a liability deductible from assets within the meaning of section 208.7 of the Tax Law and thus must be added back for purposes of the computation of the tax on capital under section 210.1(a)(2) of the Tax Law. The terms of the Citibank agreement are not clear, but even viewed the transaction in the light most favorable to petitioner, as a demand obligation, it was outstanding for more than one year prior to the first year at issue and thus is not deductible (20 NYCRR 3-4.3(b)(2)).

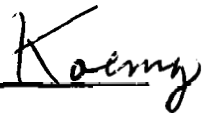
G. That the petition of The Buffalo Bluffs, Inc. is denied and the notices of deficiency issued June 26, 1984 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER