

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

TSB-A-89 (4)R
Real Estate
Transfer Tax
December 8, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.M890808A

On August 11, 1989, a Petition for Advisory Opinion was received on behalf of American Telephone and Telegraph Co., 550 Madison Avenue, New York, New York 10022.

The issue raised is whether the transfer of a parcel of real estate from a wholly-owned subsidiary to its parent Petitioner, American Telephone and Telegraph Co., for no consideration is exempt from the Real Estate Transfer Tax,

Petitioner is the common parent of a group of affiliated corporations, including AT&T Resource Management Corporation and several other companies.

Petitioner, the parent corporation of AT&T Resource Management Corporation ("AT&T - RMC") formed AT&T - RMC to acquire, operate, maintain and dispose of certain physical plants and other assets for AT&T and its affiliates. In this regard AT&T - RMC owns, among other things, several parcels of real estate in New York and in other states.

Petitioner plans to restructure its United States operations in January, 1990. This restructuring will entail the merger of several subsidiaries into AT&T. In connection with this restructuring, but not directly a part of the merger AT&T - RMC will transfer a parcel of real estate located in New York City to AT&T for no consideration. AT&T - RMC has issued one share of stock which is held by AT&T. AT&T will continue to hold AT&T - RMC's one share of stock following this transfer. This parcel of real estate is not encumbered by a mortgage or other debt. The accounting for this transfer will involve the debiting of AT&T - RMC's capital stock account while its building and land accounts will be credited by the net book value of the property to be transferred. Likewise, AT&T's capital stock account will be credited and its building and land accounts debited by the book value of the transferred property. No income or gain will be recognized by either party in this transaction.

The Real Estate Transfer Tax is imposed upon conveyances of real property where the consideration exceeds \$500 pursuant to Section 1402 of the Tax Law.

Section 1401(d) of the Tax Law states that:

"Consideration" means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract

to purchase real property whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. 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.

In the proposed transaction, the transfer will not entail consideration as envisioned by this definition. In exchange for the transfer by AT&T - RMC, AT&T will not pay to AT&T - RMC any "money, property, or any other thing of value" The removal of the real estate from the books of AT&T - RMC and its placement on those of AT&T does not constitute the payment of consideration. Nor does the transfer involve the assumption of any debt or mortgage.

This type of transfer is exempted from the payment of Real Estate Transfer Tax by Section 1405(b) of the Tax Law which provides, in pertinent part that:

The tax shall not apply to the following conveyances:

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- 6. Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;

Accordingly, the proposed transaction described above is an exempt transaction pursuant to Section 1405(b)(6), based on the fact that AT&T - RMC will be a wholly-owned subsidiary of Petitioner both before and after the transfer, with its one share of stock held by Petitioner. Thus, there will be a mere change of identity or form of ownership organization without any change in the beneficial ownership of the subject property.

DATED: November 29, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.