

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petitions	:	
of	:	
<b>244 BRONXVILLE ASSOCIATES</b>	:	<b>ORDER AND OPINION</b>
for Revision of a Determination or for Refund of Tax on	:	DTA NOS. 814542
Gains Derived from Certain Real Property Transfers under	:	AND 815566
Article 31-B of the Tax Law.	:	

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On April 13, 1998, the Real Estate Board of New York, Inc., by its representative, Roberts & Holland LLP, filed a motion for leave to file a brief as amicus curiae and for permission to be heard at oral argument on the exception. The motion was supported by the affirmation of Carolyn Joy Lee, Esq., dated April 9, 1998. The Division of Taxation, by Steven U. Teitelbaum, Esq. (Laura J. Witkowski, Esq., of counsel), filed a letter in response, dated May 8, 1998, in which it did not oppose that part of the motion which sought to file a brief but did oppose the motion for leave to be heard at oral argument on the exception. Petitioner, 244 Bronxville Associates, by Howard M. Koff, Esq., filed a response letter, dated April 17, 1998, in which it did not oppose any part of the motion.

***ORDER***

Upon reading and filing the motion, the proposed amicus brief, the response of petitioner thereto and the response of the Division of Taxation thereto, and due deliberation having been had thereon,

Now, on the motion of the Real Estate Board of New York, Inc., it is

ORDERED that said motion by the Real Estate Board of New York, Inc. to file a brief as amicus curiae be and the same is hereby granted; and

ORDERED that so much of said motion by the Real Estate Board of New York, Inc. as requests permission to be heard at oral argument on the exception be and the same is hereby denied.

### ***FINDINGS OF FACT***

On January 29, 1998, the Administrative Law Judge issued a determination that held that the Division of Taxation properly used a per share method to allocate petitioner's original purchase price to units subject to real property gains tax, rather than a relative fair market value method, for purposes of determining petitioner's final gains tax liability as a result of the repeal of the gains tax law. On February 9, 1998, petitioner filed an exception to the determination of the Administrative Law Judge. Briefs were filed by the parties as specified above.

On April 13, 1998, the Real Estate Board of New York, Inc. filed a Notice of Motion for leave to file an amicus curiae brief and appear and be heard at oral argument on the exception. The movant filed an affidavit in support as well as the amicus curiae brief. Neither the Division of Taxation nor petitioner opposed the submission of the brief, but the Division opposed the movant's request to appear at oral argument on the exception.

### ***OPINION***

Although neither party objects to the submission of the amicus curiae brief by the Real Estate Board of New York, Inc., acceptance of the brief remains in the discretion of this Tribunal. We established our standards for acceptance of such briefs in ***Matter of Standard Mfg. Co.*** (Tax

Appeals Tribunal, July 11, 1991) wherein we adopted the standard of the New York State Court of Appeals set forth in their Rules of Practice, Rule 500.11(e):

(e) Amicus Curiae Relief. (For appeals selected for sua sponte examination of the merits see section 500.4 of this Part). A brief may be filed only by leave of court granted on motion, or upon the court's own request.

Motions for amicus curiae relief, when appropriately made on notice to all of the parties and sufficiently in advance of the argument of the appeal to allow adequate court review of the motion and the proposed brief, must include consideration of and satisfaction of the court of at least one of the following criteria:

(1) a showing that the parties are not capable of a full and adequate presentation and that movants could remedy this deficiency;

(2) that movants would invite the court's attention to law or arguments which might otherwise escape its consideration; or

(3) that amicus curiae briefs would otherwise be of special assistance to the court.

As in *Standard*, we find that the proposed amicus brief meets the criteria set forth in the second and third subparagraphs and will accept the brief on those grounds.

However, we deny the request to be heard at oral argument on the exception on the same basis we denied such a motion in *Standard*, i.e., the Real Estate Board has not offered any evidence of “extraordinary reasons” for participating in the oral argument, if any, which is our standard for granting such requests.<sup>1</sup>

Accordingly, we grant so much of the motion by the Real Estate Board of New York, Inc. as seeks leave to submit a brief amicus curiae and deny so much of the motion as requests

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<sup>1</sup>We relied upon the Federal Rules of Appellate Procedure, Rule 29, for guidance, and continue to do so.

permission to be heard at oral argument on the exception. Petitioner, 244 Bronxville Associates, and the Division of Taxation are granted sixty (60) days from the date of this order to respond to the brief amicus curiae filed by the Real Estate Board of New York, Inc.

DATED: Troy, New York  
October 1, 1998

/s/Donald C. DeWitt

Donald C. DeWitt  
President

/s/Carroll R. Jenkins

Carroll R. Jenkins  
Commissioner

/s/Joseph W. Pinto, Jr.

Joseph W. Pinto, Jr.  
Commissioner