

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-00(13)C  
Corporation Tax  
July 11, 2000

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C000125B

On January 25, 2000, a Petition for Advisory Opinion was received from George R. Funaro & Co., P.C., One Penn Plaza, Suite 3515, New York, New York 10119.

The issue raised by Petitioner, George R. Funaro & Co., P.C., is whether a registered limited liability partnership that elects to be taxed as a corporation for federal income tax purposes is taxed as a corporation for New York State franchise tax purposes under Article 9-A of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

A New York registered limited liability partnership will elect, pursuant to the federal “check-the-box” rules contained in sections 301.7701-1, 301.7701-2 and 301.7701-3 of the Treasury Regulations, to be taxed as a corporation for federal income tax purposes.

**Discussion**

Effective October 1, 1994, Article 8-B was added to the Partnership Law to permit a general partnership engaged in professional service activities in New York to become a Registered Limited Liability Partnership (“RLLP”) whereby no partner would be personally liable for any debts or obligations of the partnership, except that an individual partner would be liable for any negligent or wrongful act or misconduct committed by the individual or by any person under the individual’s direct supervision and control while rendering professional service on behalf of the partnership.

A general partnership may seek RLLP status under section 121-1500 of Article 8-B of the Partnership Law if each of its partners is a professional authorized by law to render a professional service within New York, or if each of its partners is a professional and at least one of them is authorized by law to render a professional service within New York. An eligible partnership registers as a RLLP by one or more partners executing a Certificate of Registration that is filed with the Department of State.

Section 301.7701-1(b) of the Treasury Regulations, effective as of January 1, 1997, provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3 and 301.7701-4 unless a provision of the Internal Revenue Code provides for special treatment of the organization. Section 301.7701-2(a) of the Treasury Regulations, applicable as of January 1, 1997, provides that for purposes of such section and section 301.7701-3, a “business entity” is any entity recognized for federal income tax purposes that is not properly classified as a trust under section 301.7701-4 or otherwise subject to special treatment. A business entity with two or more members is classified for federal income tax purposes as either a corporation or a partnership.

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Section 301.7701-2(b) of the Treasury Regulations, effective as of January 1, 1997, provides that the term “corporation” means : (1) a corporation organized under federal or state statute; (2) an association; (3) a joint-stock company or joint-stock association; (4) an insurance company; (5) a state-chartered bank whose deposits are insured; (6) a business entity wholly owned by a state or any political subdivision thereof; (7) a business entity that is taxable as a corporation under a provision of the Internal Revenue Code other than section 7701(a)(3); and (8) certain foreign entities.

Section 301.7701-3(a) of the Treasury Regulations, applicable as of January 1, 1997, provides that for federal income tax purposes, a business entity that is not classified as a corporation under section 301.7701-2(b)(1) or (3) through (8) is an “eligible entity” that can elect its classification for federal income tax purposes. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a partnership. Where such eligible entity does not make an election, the default classification is partnership treatment.

Section 208.1 of the Tax Law provides that the term “corporation” includes an association within the meaning of section 7701(a)(3) of the IRC. Where an entity makes an election under section 301.7701-3(a) of the Treasury Regulations to be classified as an association that is treated as a corporation for federal income tax purposes, such entity is an association under section 7701(a)(3) of the IRC.

Department of Taxation and Finance Memorandum, TSB-M-94(6)I and (8)C, October 25, 1994 states that a RLLP is always treated as a partnership for federal income tax purposes. However, such TSB-M was issued prior to the applicability of section 301.7701-3(a) of the Treasury Regulations allowing such an entity to elect to be treated as a corporation. It should be noted that the TSB-M also states that “[t]he New York State Tax Law conforms with federal tax treatment regarding LLCs and LLPs.”

Accordingly, pursuant to section 208.1 of the Tax Law, an RLLP that is treated as a corporation for federal income tax purposes is treated as a corporation for New York State tax purposes. An RLLP that is treated as a partnership for federal income tax purposes, is treated as a partnership for New York State tax purposes.

DATED: July 11, 2000

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Division

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