

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

TSB-A-00(3)C
Corporation Tax
February 29, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C991213C

On December 13, 1999, a Petition for Advisory Opinion was received on behalf of Red Rose Farm, Inc., Quaker Hill Road, Pawling, New York 12564.

The issue raised by Petitioner, Red Rose Farm, Inc., is whether it is required to file franchise tax returns under Article 9-A of the Tax Law, after it was voluntarily dissolved, because it was the record title holder of real property .

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

Petitioner is the record title holder of real property in Pawling, New York. The property consists of approximately 300 acres of land with farm buildings thereon which was used by brothers, Peter and Marten Muller, to run a dairy farm.

During 1988, the Muller brothers determined that they could no longer operate the farm as a corporation. They were advised to dissolve the corporation. Accordingly, an accountant was engaged to file the necessary documentation and returns to dissolve the corporation. All franchise taxes were paid up to that point. The corporation was voluntarily dissolved effective November 30, 1988. Thereafter, the corporation did not conduct any business. The Muller brothers continued to run the dairy farm as a partnership on a more limited basis, and thereafter, filed partnership returns. Brothers, Peter and Marten Muller, are the only partners.

The partners did not understand that the real property should have been transferred out of the corporate name into the names of the individual partners when the corporation was dissolved. Accordingly, Petitioner remained the record title holder until 1997 when the Muller brothers realized that it was incorrect to still have the property in the corporate name. On July 10, 1997, the brothers executed a quit claim deed transferring title into the Red Rose Farm Partnership.

Petitioner's representative states that the federal tax returns confirm that the real estate taxes were treated as paid by the partnership and were taken as farm expenses of the partnership. Petitioner's representative also states that the 1989 New York State partnership return shows that (1) the partnership has an interest in real property located in New York State, (2) that the partnership carries on farm business at Quaker Hill Road, Pawling, New York, and (3) that the partnership business started December 1, 1988. Subsequent tax returns also indicate the same information.

Discussion

Section 209.1 of the Tax Law imposes, annually, a franchise tax on every corporation for the privilege of exercising its franchise, or of doing business, or of employing capital, or of owning or

TSB-A-00(3)C
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leasing property in New York State in a corporate or organized capacity, or of maintaining an office in New York State for all or any part of each of its fiscal or calendar years.

Section 2-3.1 of the Business Corporation Franchise Tax Regulations provides that every domestic corporation is required to pay a tax measured by entire net income (or other applicable basis) up to the date on which it ceases to possess a franchise.

Section 209.3 of the Tax Law provides that a dissolved corporation which continues to conduct business shall be subject to tax under Article 9-A of the Tax Law. Section 1-2.4(c) of the Business Corporation Franchise Tax Regulations provides further that where the activities of a dissolved corporation are limited to the liquidation of its business and affairs, the disposition of its assets (other than in the regular course of business), and the distribution of the proceeds, the dissolved corporation is not subject to tax under Article 9-A.

Therefore, a dissolved corporation that is merely a record title holder of real property located in New York State as nominee for the benefit of others, and is otherwise inactive, is not conducting business in New York State as contemplated by section 209.3 of the Tax Law. N.D.M. Autos, Inc., Adv Op Comm T & F, January 26, 1999, TSB-A-99(4)C; Rubin Brothers Holding Company, Adv Op Comm T & F, December 4, 1997, TSB-A-97(27)C; W.R.H.R.E Corp., Adv Op Comm T & F, March 3, 1995, TSB-A-95(4)C; Highmount Medical Building Inc., Adv Op Comm T & F, May 7, 1991, TSB-A-91(12)C; Harold S. Sommers, Adv Op Comm T & F, March 15, 1990, TSB-A-90(9)C; Babson Bros. Co. of New York Inc., Adv Op Comm T & F, September 1, 1988, TSB-A-88(19)C.

Accordingly, pursuant to section 209.1 of the Tax Law, Petitioner, after its dissolution, is merely holding property as nominee for the benefit of others and is not conducting business in New York State pursuant to section 209.3 of the Tax Law. Therefore, Petitioner is not subject to tax under Article 9-A of the Tax Law after it was dissolved effective November 30, 1988.

DATED: February 29, 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.