

New York State Department of Taxation and Finance  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-09(4)C  
Corporation Tax  
March 5, 2009

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C080703A

A petition received July 3, 2008 from William F. Holden (“Petitioner”) raises the issue of whether a corporation that was dissolved by proclamation over 20 years ago is subject to franchise tax under Article 9-A of the Tax Law. Specifically, Petitioner asks whether a corporation’s continued ownership of certain real property in New York, notwithstanding its dissolution, subjects it to franchise tax for the years after dissolution. We conclude that the corporation was subject to franchise tax before but not after its dissolution.

**Facts**

Petitioner is an officer of 24<sup>th</sup> Century Development Corp. (the “Company”), which was incorporated in May, 1974 for the purpose of purchasing and developing a parcel of real property (the “Property”) for use as a day-care center. A separate corporation, MACP, Inc. (“MACP”), was formed to operate and manage the day-care business, which was a franchise of a national company.

After completion of construction, the Company played no role in the day-care business other than as a record title holder of the Property. MACP operated the business and paid all expenses, including real estate taxes, mortgage payments, and utilities. All income from the business is received directly from MACP and no money is paid to the Company. The Company did not obtain a federal employer identification number and did not file New York State franchise tax returns or pay franchise tax. On December 31, 1980, the Company was dissolved by proclamation under Tax Law §203-a, and has been completely inactive since. It has never received rental or other income and it has not maintained any bank account or kept books and records since completion of the building. It has not owned any assets other than the Property.

**Analysis**

Section 209.1 of the Tax Law imposes an annual franchise tax on every corporation for the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or 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 that continues to conduct business is 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 when 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. Li'l Cricket Marina, Adv Op Comm T&F, September 13, 2002, TSB-A-02(15)C; Perlinda Realty, Inc., Adv Op Comm T&F, January 29, 1999, TSB-A-99(5)C; N.D.M.Autos, Inc., Adv Op Comm T&F, January 26, 1999, TSB-A-99(4)C; W.R.H.R.E. Corp., Adv Op Comm T&F, March 3, 1995, TSB-A-95(4)C.

Accordingly, pursuant to section 209.1 of the Tax Law, Petitioner was subject to the franchise tax imposed by Article 9-A for the taxable years during which Petitioner was incorporated beginning in May, 1974 through its dissolution by proclamation in December 1980. After its dissolution, Petitioner was merely holding property as nominee for the benefit of others and is not conducting business in New York pursuant to section 209.3 of the Tax Law. Therefore, Petitioner is not subject to tax under Article 9-A for taxable years after it was dissolved by proclamation on December 31, 1980.

DATED: March 5, 2009

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Jonathan Pessen  
Director of Advisory Opinions  
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