

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

TSB-A-86 (1) C
Corporation Tax
December 23, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C850103A

On January 3, 1985 a Petition for Advisory Opinion was received from 1049 Management Corporation, 745 Kings Highway, Hauppauge, New York 11788.

The issue raised is whether a Not-For-Profit Corporation's tax due under Article 9-A of the Tax Law should be limited to the minimum tax of \$250.

Petitioner is a corporation that is an affiliate of Local 1049 I.B.E.W., an exempt organization for Federal income tax purposes. Petitioner states that it merely holds title to real property that is used exclusively for Local 1049 I.B.E.W. business. The local pays all expenses of the property. Petitioner is a Not-For-Profit corporation that has issued stock of the corporation to the trustees of the Local. Because of its affiliation with the exempt entity, Local 1049 I.B.E.W., Petitioner has been advised by the Internal Revenue Service that no Federal corporation income tax or any other Federal form is required to be filed.

Petitioner states that it is merely a conduit through which mortgage payments are made to the mortgagee. The balance in its corporate checking account remains static since its receipts equal the mortgage payments. Petitioner has no earnings and therefore believes that it should not be taxed on profits and that its tax should be limited to the minimum tax of \$250.

Section 209.1 of Article 9-A of the Tax Law imposes a franchise tax on every domestic or foreign corporation "For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this State. . . ." Section 1-3.4(b)(6) of the Business Corporation Franchise Tax regulations exempts from the franchise tax non-stock corporations which are organized and operated exclusively for non-profit purposes, including Not-For-Profit Corporations. However, Petitioner has issued stock and thereby does not come within such exemption. (See: Matter of Cape Pond, Inc., Decision of the State Tax Commission, July 18, 1980, TSB-H-80(20)C).

Section 209.1 of Article 9-A further states that "...every domestic or foreign corporation... shall annually pay a franchise tax, upon the basis of its entire net income or upon such other basis as may be applicable as hereinafter provided...." Section 210.1(a) of Article 9-A sets forth four methods of computing such tax and provides that the method which produces the largest tax shall be applicable. Section 3-1.2(a) of the Business Corporation Franchise Tax regulations describes the four methods as follows:

- (1) 10 percent of its entire net income, or the portion thereof allocated to New York State;

(2) 10 percent of an amount equal to 30 percent of the balance remaining after adding to entire net income compensation paid to officers and to stockholders owning in excess of five percent of its issued capital stock and deducting therefrom \$30,000... and any net loss for the reported year, or the portion of such amount allocated to New York State;

(3) 1.78 mills... of the total of its business capital and investment capital, or the portion thereof allocated to New York State; or

(4) \$250.

There is no provision in Article 9-A or the Business Corporation Franchise Tax regulations promulgated thereunder, that allows a taxpayer to limit its tax liability to the minimum tax of \$250 unless such amount is the largest of the four alternative methods.

Accordingly, pursuant to sections 209.1 and 210.1(a) of Article 9-A of the Tax Law, Petitioner must compute the tax for each of the four alternative methods and Petitioner's tax liability is the largest amount. The minimum tax of \$250 is applicable only when it is the largest of the four computations.

DATED: December 23, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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