

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

TSB-A-88 (18)C
Corporation Tax
September 1, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C880622A

On June 22, 1988, a Petition for Advisory Opinion was received from Eugene Strasser, 1675 46th Street, Brooklyn, New York 11204.

The issue raised is whether an inactive Florida corporation, that is record title holder of a parcel of New York State real estate as nominee for a New York partnership, is subject to New York State Franchise Tax under Article 9-A of the Tax Law.

Petitioner formed a partnership with four other New York residents on February 23, 1986. The partnership bought a number of vacant lots in New York City on February 24, 1986. The partners had title to the lots registered in the name of a Florida corporation to obscure from neighboring property holders the true owner of the lots being acquired. The Florida corporation never engaged in any activity, never even opening a bank account, from its incorporation on March 21, 1978 to its formal dissolution on March 5, 1987.

The corporation never filed a federal corporation tax return. The partnership files a federal partnership return and reports all transactions applicable to the property. Each partner reports his proportionate share of partnership income and loss on his personal federal income tax return. The partnership maintains a bank account into which all receipts are deposited and out of which all expenses are paid. The partnership has filed information returns for New York State. Each of the partners reports his proportionate share of partnership income and loss on his New York State income tax return.

Section 209.1 of the Tax Law imposes a franchise tax on foreign corporations for the privilege 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 1-3.2(d) of the Business Corporation Franchise Tax Regulations (hereinafter "Regulations) provides that "[t]he owning or leasing of real or personal property within New York State constitutes an activity which subjects a foreign corporation to tax... Property held as a nominee for the benefit of others creates taxable status "

Therefore, a foreign corporation that is merely a record title holder of real property located in New York State as nominee for the benefit of others is subject to tax under Article 9-A.

Section 2-3.1 (a) of the Regulations provides that a foreign 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 do business, employ capital, own or lease property in e corporate or organized capacity or maintain an office in this State."

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. Section 1-2.2 of the 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.

Accordingly, the Florida corporation that is record title holder of real property located in New York State is subject to the franchise tax imposed by Article 9-A of the Tax Law, pursuant to section 209.1 of such law and section 1-3.2(d) of the Regulations, for the taxable years during which it was in existence and held title to such property; that is, taxable years 1986 and 1987. After its formal dissolution, the Florida corporation will not be subject to tax under Article 9-A unless it conducts business in New York. Pursuant to section 209.3 of the Tax Law, merely holding property as nominee for the benefit of others is not sufficient activity to subject the dissolved Florida corporation to tax under Article 9-A.

DATED: September 1, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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