

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

TSB-A-88 (9)C  
Corporation Tax  
April 6, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C880107B

On January 7, 1988, a Petition for Advisory Opinion was received from W.N.Y. Ayrshire Club, Box 291, South Dayton, New York 14138.

The issue raised is whether an association or club, as described herein, is subject to New York State franchise tax.

Petitioner was organized as an unincorporated association on October 20, 1979. Petitioner does not issue stock or other certificates or written instruments evidencing ownership interests. Petitioner's purposes as stated in its Constitution are, "to improve the Ayrshire cattle of Western New York State; to associate its members together; to assist its members - without profit to the Club - in promotional work with dairymen, dairy organizations, dealers and others .... " Any person may become a member of the club upon payment of the membership dues.

Petitioner's major activity is conducting a cattle auction. Ayrshire cattle are furnished to Petitioner on consignment to be "auctioned off". Each animal is sold to the highest bidder with the organization receiving a 10 percent commission on each sale. The consignor accepts whatever the highest bid nets him. These auctions are advertised in farm magazines, local newspapers and on posters. All labor is provided by Petitioner except that a professional auctioneer is hired.

It has been determined that for federal income tax purposes Petitioner is not exempt from tax pursuant to section 501(c)(5) of the Internal Revenue Code which grants exemption to, "labor, agricultural or horticultural organizations." The determination was based on Revenue Ruling 66-105 which held that an organization similar to Petitioner's was not exempt under section 501(c)(5) of the Internal Revenue Code. Such Revenue Ruling describes an organization of agricultural producers whose principal activity is marketing livestock as agent for its members at auctions held throughout the year. The organization provided labor, advertising, bookkeeping services and the physical facilities required for auctions. A percentage of sales proceeds is retained by the organization and the balance is remitted to the original owner of the livestock.

Section 209.1 of Article 9-A of the Tax Law imposes a corporate franchise tax on a corporation "[f]or the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this state in a corporate or organized capacity .... "

Section 208.1 of the Tax Law provides that "[t]he term "corporation" includes a joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument .... "

Regulation section 1-2.3(b) of the Business Corporation Franchise Tax regulations provides:

(b) the term corporation includes a joint stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument. An entity conducted as a corporation is deemed to be a corporation.

(1) The terms joint stock company and association include every unincorporated joint stock association, joint stock company or enterprise having written articles of association and capital stock divided into shares. The term association includes a joint stock association.

Inasmuch as Petitioner was created as an unincorporated association, does not issue stock or other certificates or written instruments evidencing ownership interests, Petitioner is not a "corporation" for purposes of regulation section 1-2.3(b) and is not subject to the tax imposed by Article 9-A of the Tax Law.

DATED: April 6, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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