

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

TSB-A-92 (14) C  
Corporation Tax  
October 13, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C920819A

On August 19, 1992, a Petition for Advisory Opinion was received from Bernice E. Bouton, individually and as secretary for the now dissolved Midstate Research, Inc., 5151 N. Kain Street #106, Tucson, Arizona 85705.

The issue raised by Petitioner, Bernice E. Bouton, is whether Midstate Research, Inc., an inactive corporation that was dissolved by proclamation and that is record title holder of real property in New York State, is subject to New York State franchise tax under Article 9-A of the Tax Law.

Midstate Research, Inc., was incorporated in New York State on February 3, 1958. It acquired title to four acres of vacant land in the Town of Webb, Herkimer County on September 3, 1958. Said property was still vacant as of March 1992.

As of 1971, Midstate Research, Inc., ceased to function, conducted no business whatsoever, and performed no activities in its corporate name. Its two officers, Gerald D. Bouton (now deceased), President, and Bernice E. Bouton, Corporate Secretary thought Midstate Research, Inc. had gone into voluntary dissolution and also thought that any real estate owned by Midstate Research, Inc. was transferred to Gerald D. Bouton and Bernice E. Bouton, as husband and wife, at that time.

Since 1971 Midstate Research, Inc. was merely a title holder of real property and was otherwise completely inactive, conducting no business in New York State. The Boutons continued to pay real property taxes to the locality in their individual capacities without realizing that Midstate Research, Inc., remained in existence and that title to the property had never been transferred to them as husband and wife. In 1976, Bernice E. Bouton became aware that title had never been transferred and that the Herkimer County Department of Taxation still listed Midstate Research, Inc. on its tax rolls as the owner of the property. She had such Department change the tax rolls for said property from Midstate Research, Inc., to Mrs. Jerry Bouton.

Midstate Research, Inc. was dissolved by proclamation in 1980. However, in a recent attempt to sell the four acres of real estate in the Town of Webb, Herkimer County, it was discovered that the property was never conveyed to the Boutons in 1971 and remains in the name of Midstate Research, Inc.

Section 209.1 of the Tax Law imposes 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 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 (hereinafter "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. 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. 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, for taxable years 1972 through 1980 during which Midstate Research, Inc. was incorporated, Midstate Research, Inc. is subject to the franchise tax imposed by Article 9-A of the Tax Law, pursuant to section 209.1 of the Tax Law. After its dissolution by proclamation in 1980, Midstate Research, Inc. was merely holding property as nominee for the benefit of others and was not conducting business in New York State pursuant to section 209.3 of the Tax Law. Therefore, Midstate Research, Inc. is not subject to tax under Article 9-A after it was dissolved by proclamation.

DATED: October 13, 1992

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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