

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

TSB-A-93 (16) C
Corporation Tax
August 13, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C930621C

On June 21, 1993, a Petition for Advisory Opinion was received from 1028 Faile Street Corp., 321 Chestnut Ridge Road, Mt. Kisco, New York 10549.

The issue raised by Petitioner, 1028 Faile Street Corp., a corporation dissolved by proclamation in 1981, is whether it is subject to tax under Article 9-A of the Tax Law.

Petitioner was incorporated on March 8, 1977 and was dissolved by proclamation in September 1981. The corporation consisted of a two family home that never showed any profit and was closed down not long after incorporating and has remained closed since. No franchise tax returns have ever been filed and no tax has ever been paid for this corporation. The owner of the corporation and the property has been deceased since 1981.

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 of the Tax Law. 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 of the Tax Law.

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. Bernice E. Bouton, Adv Op, Comm T & F, October 13, 1992, TSB-A-92(14)C; 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-(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 ended February 28, 1978 through September 30, 1981 during which Petitioner was incorporated, Petitioner 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 September 1981, if Petitioner 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, Petitioner is not subject to tax under Article 9-A of the Tax Law after it was dissolved by proclamation.

DATED: August 13, 1993

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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