

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

TSB-A-97(27)C
Corporation Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C970819A

On August 19, 1997 a Petition for Advisory Opinion was received from Rubin Brothers Holding Company, c/o George Comfort & Sons, Inc., 200 Madison Avenue, New York, New York.

The issue raised by Petitioner, Rubin Brothers Holding Company, is whether a dissolved corporation that holds record title to real estate as nominee is subject to tax under Article 9-A of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a limited partnership organized under the laws of New York State. It was formed by members of the Rubin family to hold a number of parcels of real estate located in New York and in New Jersey. The partnership interests were originally owned by three brothers. Over the years since its formation, interests in Petitioner have been conveyed to the children, spouses and grandchildren of the original partners.

At various times since its formation, Petitioner's legal and financial advisors have reviewed the structure through which it owned its various real estate holdings. At some point during the late 1980's, Petitioner's attorneys contemplated conveying each of its real estate properties to a separate specially formed corporation all of the stock of which would be owned by Petitioner. In this way, it was believed that each of the properties could be shielded from potential liabilities that could arise with respect to the other properties.

The plan in its entirety was never consummated, but in the process of preparing for its implementation some steps were taken. Among them, RBHC-Briarcliff Corp., a New York corporation, (the "Corporation") was incorporated and, on February 27, 1989, a deed conveying the property located on North State Road, Briarcliff Manor, Ossining, New York, Section 4, Plate 22, Block 15, Lot 12A and 12B (the "Property"), from Petitioner to the Corporation was prepared, executed and recorded. On February 28, 1989, the Corporation, as lessor, entered into a Lease Extension Agreement with Raymond P. Oakley, as lessee. Petitioner's principals have no recollection of the details of the execution of these documents. In fact, Petitioner's accountants were never informed of the existence of the Corporation or of any change in the ownership of the Property. The Lease Extension Agreement appears to be an isolated transaction involving the Corporation as a party.

Petitioner has undergone another legal analysis in contemplation of a restructuring and has, in fact, adopted a plan whereby it will be converted into a limited liability company organized under the laws of New York State. In connection with this analysis, the principals of Petitioner, and its current

legal advisors and management personnel, were surprised to learn that the Corporation existed and that it held record title to the Property. They also discovered that the Corporation was dissolved by proclamation on September 29, 1993.

At no time since March 1, 1989 has the Property been represented as owned by the Corporation. The Corporation has been treated by Petitioner as a nullity in all respects. No meetings of shareholders, directors or officers have been held nor have any directors been elected or officers appointed. No tax returns have been filed for the Corporation. All expenses of the Property have been borne by Petitioner and all income that it has generated has been paid to Petitioner. All of such items have been reflected on Petitioner's tax returns. Other than the Lease Extension Agreement, executed the day after the Property was conveyed to the Corporation, all documents (such as subsequent leases) relating to the Property have been executed by Petitioner, as owner of the Property, without regard to the fact that record title to the Property is in the Corporation. In sum, at virtually all times since Petitioner acquired the Property, Petitioner has held itself out in all respects as owner of the Property, notwithstanding the execution, delivery and recording of the deed to the Corporation.

Section 209.1 of the Tax Law imposes, annually, 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 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 1-2.4(c) of the Business Corporation Franchise Tax 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. W.R.H.R.E Corp., Adv Op Comm T & F, March 3, 1995, TSB-A-95(4)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-90(9)C; Babson Bros. Co. of New York Inc., Adv Op Comm T & F, September 1, 1988, TSB-A-88(19)C.

Accordingly, pursuant to section 209.1 of the Tax Law, the Corporation is subject to the franchise tax imposed by Article 9-A for the taxable years during which the Corporation was incorporated. After its dissolution by proclamation September 29, 1993, the Corporation is merely holding property as nominee for the benefit of others and is not conducting business in New York State pursuant to section 209.3 of the Tax Law. Therefore, the Corporation is not subject to tax under Article 9-A of the Tax Law after it was dissolved by proclamation.

DATED: December 4, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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