

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

TSB-A-99(4)C  
Corporation Tax  
January 26, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C981221B

On December 21, 1998, a Petition for Advisory Opinion was received from N.D.M. Autos, Inc., Box 31, Katrine Lane, Lake Katrine, New York 12449.

The issue raised by Petitioner, N.D.M. Autos, Inc., is whether it is subject to franchise tax under Article 9-A of the Tax Law subsequent to its dissolution by proclamation.

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

Petitioner was a domestic corporation whose certificate of incorporation was filed on August 16, 1983. The sole officers, directors and stockholders are Norman Trahan and Mary Trahan, husband and wife. At the time the certificate was filed, the said owners intended to engage in the business of selling and trading cars and trucks or livestock or poultry. The realty was transferred without consideration, by Norman Trahan and Mary Trahan, to Petitioner by deed dated November 22, 1983, and recorded in the Ulster County Clerk's Office on December 1, 1983.

Mr. Trahan became ill soon after Petitioner was formed. At age 66, he was diagnosed with severe emphysema. Therefore, all plans to begin operation of the business were stopped. No business ever commenced. Mr. Trahan progressively deteriorated until he now requires constant oxygen.

Petitioner was dissolved by proclamation in June, 1988. Petitioner never conducted business or exercised its franchise. No office was ever maintained at any time by Petitioner in New York or elsewhere. The address given in the certificate of incorporation was the residence address of Norman Trahan and Mary Trahan. Mr. and Mrs. Trahan lived in a house on the realty conveyed to Petitioner.

Mr. and Mrs. Trahan paid from their personal funds all the realty taxes imposed on the realty owned by Petitioner.

**Discussion**

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.

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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. Rubin Brothers Holding Company, Adv Op Comm T & F, December 4, 1997, TSB-A-97(27)C; 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, Petitioner is subject to the franchise tax imposed by Article 9-A for the taxable years during which Petitioner was incorporated beginning August 16, 1983 through its dissolution by proclamation in June 1988. After its dissolution, Petitioner 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, Petitioner is not subject to tax under Article 9-A of the Tax Law after it was dissolved by proclamation in June 1988.

DATED: January 26, 1999

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

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