

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

TSB-A-99(5)C
Corporation Tax
January 26, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C981007B

On October 7, 1998, a Petition for Advisory Opinion was received from Perlinda Realty, Inc., 917 Gates Avenue, Brooklyn, New York 11221.

The issue raised by Petitioner, Perlinda Realty, 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 incorporated on October 22, 1962 expressly for the purpose of owning the real property located at 917 Gates Avenue, Brooklyn, New York. Petitioner was dissolved by proclamation in December 1969 for non-payment of franchise taxes. Following its dissolution, Petitioner continued to own the above described real property at 917 Gates Avenue.

The sole shareholder of Petitioner was Frances Roberts. Petitioner states that Ms. Roberts' daughter indicates that Petitioner never received rental income from the premises. During the entire period of time that the house at 917 Gates Avenue was under corporate ownership, the rental income from any and all tenants was paid directly to Frances Roberts and not to Petitioner. All real estate taxes and other assessments paid to New York City and New York State, were paid by the individual, Frances Roberts, not by Petitioner.

Petitioner indicates that Ms. Roberts' daughter also states that Petitioner did not maintain a corporate bank account; it did not elect officers or directors; it never obtained a formal taxpayer identification number; it never made or received disbursements; it did not remit taxes to New York City or New York State; nor did it file tax returns to either taxing agency. For purposes of this opinion, it is assumed that the facts provided Petitioner by Ms. Roberts' daughter are correct.

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.

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.

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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.

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. After its dissolution by proclamation in December 1969, 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.

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.