

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(12)C
Corporation Tax
April 24, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C000214B

On February 14, 2000, a Petition for Advisory Opinion was received from Jeffrey Freund, 430 Crown Street, Brooklyn, New York 11225.

The issue raised by Petitioner, Jeffrey Freund, is whether a dissolved corporation is subject to franchise tax under Article 9-A of the Tax Law.

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

Petitioner states that he set up a corporation, named JN Parkville Inc or JN Parkville Corp, in 1990. For purposes of this advisory opinion, it is assumed that the corporation was incorporated in New York State. Petitioner hoped to use it as a small business corporation (Sub Chapter S). However, following the advice of his accountant at the time, Petitioner did not use the corporation. Since 1990, Petitioner has reported all business income in his own name, not under the corporation name. Petitioner states that he has filed his personal tax returns including such income as rental income on Federal Form 1040 Schedule E, Part 1 – Income of Loss From Rental Real Estate and Royalties.

Petitioner states that the corporation has never functioned, and Petitioner's business has not been conducted in the corporate name. The corporation was dissolved by proclamation in 1994. No franchise tax returns were ever filed for the corporation.

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.

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

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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. N.D.M. Autos, Inc., Adv Op Comm T & F, January 26, 1999, TSB-A-99(4)C; 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's corporation, JN Parkville Inc or JN Parkville Corp, is subject to the franchise tax imposed by Article 9-A for the taxable years during which the corporation was incorporated, that is, from the time it was set up in 1990 until it was dissolved by proclamation in 1994.

From the facts presented, it cannot be determined whether the corporation is a record title holder of real property located in New York State. However, after its dissolution the corporation was inactive, and even if it does hold property as nominee for the benefit of others, it 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 1994.

DATED: April 24, 2000

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

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