

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

TSB-A-02(15)C
Corporation Tax
September 13, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C020523A

On May 23, 2002, a Petition for Advisory Opinion was received from Li'l Cricket Enterprises, Inc., c/o Barbara Amuso, 88-07 156th Avenue, Howard Beach, New York 11414.

The issues raised by Petitioner, Li'l Cricket Enterprises, Inc., are whether (1) it held real property as a nominee for a partnership, as described below, (2) it was conducting business in New York pursuant to section 209.3 of the Tax Law, and (3) it is subject to tax under Article 9-A of the Tax Law.

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

Barbara Amuso is the principal partner of Li'l Cricket Marina, the ("Partnership"). Until recently, Ms. Amuso believed that the Partnership was the title owner of property located at 164-49 Cross Bay Boulevard, Howard Beach, New York, identified as Block 14207, Lot 105 in Queens County, New York ("Property").

In anticipation of obtaining a mortgage for the Property or restructuring the Partnership, Ms. Amuso obtained a title search for the Property which indicated that Petitioner is the record owner of the Property continuously since November 22, 1974. Petitioner, a domestic corporation, was dissolved by proclamation of the Secretary of State on March 27, 1979.

Petitioner states that the Partnership, not Petitioner, has paid the real estate taxes and water and sewer charges for the Property. Petitioner also states that at no time did Petitioner operate, manage or control the Property, nor did Petitioner ever maintain a bank account or make any payment of any kind in respect to the Property. Petitioner further states that Petitioner has been treated by the Partnership as a nullity, a nonexisting entity which never owned, controlled, managed or was involved with the operation of the Property. There were no meetings of the shareholders of Petitioner, and no directors or officers of Petitioner have ever been elected or appointed.

Lastly, Petitioner states that the Partnership has always held itself out as the owner of the Property, paying all expenses including real estate taxes, notwithstanding the fact that the deed indicates that the dormant nominee, Petitioner, is the grantee and owner of the Property.

Law and Regulations

Section 209.1 of the Tax Law imposes, annually, a franchise tax on every corporation "For the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or

of owning or leasing property in this state in a corporate or organized capacity, or of maintaining an office in this state, for all or any part of each of its fiscal or calendar years....”

Section 2-3.1(a) of the Business Corporation Franchise Tax Regulations provides that “The franchise tax is imposed for all or any part of each taxable year during which a taxpayer exercises its corporate franchise... Accordingly, every taxpayer 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 if a domestic corporation....”

Section 2-3.1(b) of the Business Corporation Franchise Tax Regulations provides that “A domestic corporation may cease to possess a franchise as a result of its dissolution....”

Section 209.3 of the Tax Law provides “... A dissolved corporation which continues to conduct business shall also be subject to tax imposed by this article.” Section 1-2.4(c) of the Business Corporation Franchise Tax Regulations provides that “The term *taxpayer* also includes a corporation which continues to do business after it has been dissolved by the filing of a certificate of dissolution, by proclamation or otherwise. A dissolved corporation, the activities of which 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, is not taxable under article 9-A of the Tax Law.”

Opinion

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. Perlinda Realty, Inc., Adv Op Comm T&F, January 29, 1999, TSB-A-99(5)C; 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; Eugene Strasser, Adv Op Comm T&F, September 1, 1988, TSB-A-88(18)C.

Accordingly, pursuant to section 209.1 of the Tax Law, Petitioner exercised its franchise from the date of Petitioner’s incorporation until its dissolution by proclamation on March 27, 1979, and was subject to the franchise tax imposed by Article 9-A for those taxable years during which Petitioner was incorporated.

However, after its dissolution by proclamation, Petitioner was inactive. The Partnership believed itself to be the title owner of the Property. The Partnership has paid the real estate taxes and water and sewer charges for the Property, and has been operating, managing and controlling the

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property. Petitioner did not operate, manage or control the Property, nor did it have a bank account or make any payments of any kind with respect to the Property. Therefore, Petitioner was merely holding property as nominee for the benefit of others, and after its dissolution on March 27, 1979, Petitioner has not conducted business in New York State pursuant to section 209.3 of the Tax Law. Accordingly, Petitioner was not subject to tax under Article 9-A of the Tax Law after it was dissolved by proclamation on March 27, 1979.

DATED: September 13, 2002

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