

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. C130322A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether a New York corporation is subject to franchise tax under Article 9-A of the Tax Law subsequent to its dissolution by proclamation.

We conclude that the corporation was subject to franchise tax before but not after its dissolution.

Facts

Petitioner is the sole incorporator of [REDACTED]. (“Company 1”), which was incorporated on July 5, 1983 for the purpose of purchasing a parcel of real property in Brooklyn, New York (the “Land”). Petitioner also operates a landscaping business on the Land under a separate business entity (“Company 2”). After the purchase of the Land, Company 1 played no role in the landscaping business other than holding title to the Land. Company 2 paid all expenses, including mortgage payments, real estate taxes, water and sewer charges and insurance and utilities. Company 2 received all income from the landscaping business and no money was paid to Company 1. Company 1 did not obtain a federal identification number and did not file New York franchise tax returns or pay New York franchise tax. Company 1 did not operate, manage or control the property. Company 1 did not have a checking account and did not make any payments related to the Land. Company 1 received no rental or other income and did not keep any books or records. Company 1 did not have shareholder or director meetings. On June 15, 1988, Company 1 was dissolved by proclamation under Tax Law § 203-a. Company 1 has been inactive since its dissolution, although it is still the record owner of the Land. Petitioner has asked whether Company 1 is subject to franchise tax under Article 9-A of the Tax Law subsequent to its dissolution by proclamation.

Analysis

Tax Law § 209.1 imposes 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 New York in a corporate or organized capacity, or of maintaining an office in New York for all or any part of each of its fiscal or calendar years. A corporation that fails to file its annual tax reports for two consecutive years may be dissolved by proclamation of the Secretary of State (Tax Law §§ 203-a, 217.)

20 NYCRR § 2-3.1 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. Tax Law § 209.3 provides that a dissolved corporation which continues to conduct business shall be subject to tax under Article 9-A of the Tax Law. 20 NYCRR § 1-2.4(c) 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.

In TSB-A-02(15)(C), the Department reviewed the issue of whether a dissolved, inactive corporation that is merely a record title of real property located in New York, as a nominee for others, is considered to be doing business and concluded that it was not. Title holding was not considered to be an employment of capital when the holder is an inactive nominee corporation. A dissolved corporation that is merely a record title holder of real property located in New York, as nominee for the benefit of others, and is otherwise inactive, is not conducting business in New York State as contemplated by Tax Law § 209.3. *See also* TSB-A-09(4)C; TSB-A-99(5)C; TSB-A-99(4)C; TSB-A-95(4)C.

Accordingly, pursuant to Tax Law § 209.1, Company 1 is subject to the franchise tax imposed by Article 9-A for the taxable years during which Company 1 was incorporated beginning in July, 1983 through its dissolution by proclamation in 1988. After its dissolution, Company 1 is merely holding property as nominee for the benefit of others and is not conducting business in New York pursuant to Tax Law § 209.3. Therefore, Company 1 is not subject to tax under Article 9-A for taxable years after it was dissolved.

DATED: March 17, 2015

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.