

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

TSB-A-90(3)C  
Corporation Tax  
January 26, 1990

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C891003B

On October 3, 1989, a Petition for Advisory Opinion was received from University Medical Practice Services, P.C., School of Medicine and Biomedical Sciences, SUNY at Buffalo, 174 CFS Building, Buffalo, New York 14214.

The issue raised is whether Petitioner, University Medical Practice Services, P.C., is exempt from the franchise tax imposed under Article 9-A of the Tax Law by reason of section 1-3.4(b)(6) of the Business Corporation Franchise Tax regulations.

Petitioner is a newly created New York professional corporation formed for the purpose of aiding and facilitating the provision of clinical instruction of students of the School of Medicine and Biomedical Services (hereinafter "School of Medicine") of the State University of New York at Buffalo (hereinafter "University"). The School of Medicine is a department of the University, an organization exempt from federal and state taxes pursuant to its status as an agency of the State of New York.

Petitioner was formed as a professional corporation under the New York Business Corporation Law, Article 15, because New York State law requirements prohibit the practice of medicine, even as an integral part of medical education, in any other corporate form. The Petitioner has issued one share of its common stock to John P. Naughton, M.D., the Dean of the School of Medicine, in consideration of a cash payment of \$1.00. Petitioner's Certificate of Incorporation provides that Petitioner will operate on a not-for-profit basis pursuant to a Shareholder Agreement which requires that any new shareholder must hold the position of Dean or Acting Dean of the School of Medicine. Pursuant to the Shareholder Agreement, the Dean of the School of Medicine will not receive any compensation for services rendered as the sole director and officer of Petitioner and has assigned all rights to dividends and assets distributable upon dissolution of Petitioner to (i) the University to be used for the benefit of the School of Medicine or (ii) if the University ceases to be qualified for tax-exempt status under section 501(c)(3) of the Internal Revenue Code then to a qualified section 501(c)(3) organization selected by the sole director of Petitioner.

Petitioner furthers the educational purpose of the University by providing an opportunity for multi-specialty clinical instruction of medical students by faculty of the School of Medicine. Clinical instruction, an essential part of medical training, refers to teaching medical knowledge, skills and procedures to students in the course of rendering care to patients. Petitioner also provides an additional ambulatory site in compliance with the School of Medicine's public policy mandate for increased ambulatory educational experiences for medical students and residents, and the importance of this opportunity for clinical instruction in furtherance of the University's educational purposes is

underscored by the fact that the University does not own or operate a teaching hospital in Buffalo, New York.

Petitioner has received a determination by the Internal Revenue Service that it is an organization exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Internal Revenue Code.

Section 1-3.4(b)(6) of the Business Corporation Franchise Tax regulations (hereinafter "Regulations") exempts, from the imposition of the franchise tax, a corporation organized other than for profit which does not have stock or shares or certificates for stock or for shares and which is operated on a non-profit basis and no part of the net earnings of such corporation inures to the benefit of any officer, director or member. This regulation also provides that a corporation exempt from federal income taxation pursuant to section 501(a) of the Internal Revenue Code is presumed exempt from tax under Article 9-A of the Tax Law and that the determination of the Internal Revenue Service regarding tax exempt status will ordinarily be followed for New York State tax purposes.

Petitioner contends that it was formed under the New York Business Corporation Law, Article 15, and has certificates for stock only because New York State law requirements prohibit the practice of medicine, even in connection with medical education, in any other corporate form. Absent this New York State law requirement, Petitioner would otherwise have been organized under the New York Not-for-Profit Corporation Law. However, the stock has nominal value (\$1.00), the Petitioner is operated on a non-profit basis, and no part of the net earnings of Petitioner will inure to the benefit of any officer, director or shareholder of Petitioner. Further, the Internal Revenue Service has determined Petitioner to be exempt from federal income taxation pursuant to section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Internal Revenue Code. Petitioner argues that section 1-3.4(b)(6) of the Regulations confirms that a corporation exempt from Federal income tax under section 501(a) of the Internal Revenue Code is presumed exempt from tax under Article 9-A of the New York Tax Law because the determination of the Internal Revenue Service will ordinarily be followed.

Petitioner asserts that it has complied with all substantive provisions of section 1-3.4(b)(6) of the Regulations and that it has certificates for shares of a nominal value (\$1.00) only because New York State law requirements prohibit the practice of medicine in any corporate form other than a professional corporation.

Section 209.1 of Article 9-A of the Tax Law imposes a franchise tax on every domestic or foreign corporation "[f]or the privilege of exercising its corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in this State ...." Section 1-3.4(b)(6) of the Regulations exempts from the franchise tax "...corporations organized other than for profit which do not have stock or shares or certificates for stock or for shares and which are operated on a nonprofit basis no part of the net earnings of which inures to the benefit of any officer, director, or member, including Not-For-Profit Corporations and Religious Corporations. Such section 1-3.4(b)(6) provides further that "[a] corporation organized other than for profit, as described in

this paragraph, which is exempt from Federal income taxation pursuant to subsection (a) of section 501 of the Internal Revenue Code, will be presumed to be exempt from tax under article 9-A."

It was not intended that such exemption be applied to not-for-profit stock corporations. Senate Bill Introductory No. 2503 of 1966 would have explicitly exempted stock corporations operated on a nonprofit basis. That bill was vetoed by the Governor on May 16, 1966 specifically to avoid creating doubt about the exemption of nonstock corporations which is acknowledged as valid but which is not explicit in the statute. Opinion of Counsel, November 28, 1967, NYTB 1967-4, p. 47.

In Cornell Research Foundation, Inc., Adv Op St Tax Comm, July 20, 1987, TSB-A-87(18)C, it was determined that a stock corporation, even if it is organized and operated exclusively for nonprofit purposes, is not exempt from the franchise tax pursuant to section 1-3.4(b)(6) of the Regulations. Also, see 1049 Management Corporation, Adv Op St Tax Comm, December 23, 1985, TSB-A-86(1)C and Matter of Cape Pond, Inc., Dec St Tax Comm, July 18, 1980, TSB-H-80(20)C.

Based on the legislative history of this issue, State Tax Commission Advisory Opinions issued, and State Tax Commission Decisions rendered, it is clear that a stock corporation, regardless of whether it is organized and operated exclusively for nonprofit purposes, is not exempt from tax pursuant to section 1-3.4(b)(6) of the Regulations.

Herein, Petitioner is a stock corporation. Therefore, Petitioner does not fall within the scope of the exemption contained in section 1-3.4(b)(6) of the Regulations. It is of no consequence that only one share of stock was issued in consideration of \$1.00 or that Petitioner is exempt for federal income tax purposes. Accordingly, Petitioner is subject to the franchise tax imposed by Article 9-A of the Tax Law.

DATED: January 26, 1990

PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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