

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

TSB-A-90(9)C  
Corporation Tax  
March 15, 1990

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C900109B

On January 9, 1990 a Petition for Advisory Opinion was received from Harold S. Sommers, 750 Third Avenue, Suite 2400, New York, New York 10017.

The issue raised by Petitioner, Harold S. Sommers, is whether a corporation which has no assets and has been voluntarily dissolved since February, 1967, is liable for franchise taxes if its only act, from the date of its voluntary dissolution, was to join in a conveyance of real property in December, 1989, for the sole purpose of filling in the chain of title, since its deed of conveyance in March, 1967 was not recorded.

In March, 1967, X corporation, a domestic corporation, conveyed by Bargain and Sale Deed certain real property to Y and Z, the two individual stockholders of X corporation, in total liquidation of X corporation. X corporation had been incorporated in the State of New York in 1955 and was voluntarily dissolved in February, 1967. In 1969, Y and Z conveyed the real property to an employees' profit sharing trust and in 1984, the trust conveyed the real property to Y, the sole participant of said trust, in partial distribution of the trust. All of the deeds for the above conveyances were recorded, except for X corporation's conveyance to Y and Z in March, 1967. In December, 1989, Y conveyed the real property to M, a partnership. In connection with this transaction, M partnership requested title insurance and in order to fill in the chain of title caused by the failure to record the deed from X corporation to Y and Z in March, 1967, the title insurance company had X corporation join in the conveyance to M partnership, since the original 1967 deed could not be located. However, in its title report the title insurance company has made an exception for possible unpaid franchise taxes against X corporation by virtue of its joining in this conveyance. The title insurance company has agreed to remove this exception in its title report if an advisory opinion is rendered by the Commissioner of Taxation and Finance stating that the joining in this conveyance on the part of X corporation for the sole purpose of filling in the chain of title, will not result in franchise tax liability.

Since its voluntary dissolution in February, 1967, and its actual conveyance of the real property in March, 1967, in liquidation of the corporation, X corporation has held no assets and has been totally inactive. The only reason it has joined Y in the conveyance to M partnership is to fill in the chain of title caused by the failure to record the deed of conveyance in March, 1967 to Y and Z, which original deed could not be located (only copies exist).

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. Section 1-2.2 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.

Accordingly, after it was dissolved, X corporation was merely the record title holder of the property and had no beneficial interest in it. Therefore it was not conducting business in New York State pursuant to section 209.3 of the Tax Law and Section 1-2.2 of the Business Corporation Franchise Tax Regulations. The mere execution of a deed to correct a defect in the chain of title did not constitute conducting business in New York State. Thus, X corporation is not subject to tax under Article 9-A after it was dissolved, and is entitled to a release of lien of New York State Corporation Franchise Tax for taxable years 1968 through 1989.

DATED: March 15, 1990

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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