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

TSB-A-91(12)C
Corporation Tax
May 7, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. C910222A

On February 22, 1991, a Petition for Advisory Opinion was received from Highmount Medical Building Inc., c/o Michael H. Reeder, 37 Congers Road, P. O. Box 669, New City, New York 10956.

The issue raised by Petitioner, Highmount Medical Building, Inc., is whether an inactive corporation that was dissolved by proclamation and that is record title holder of real property in New York State, is subject to New York State franchise tax under Article 9-A of the Tax Law.

In 1976, three doctors formed an informal partnership for the purpose of acquiring a parcel of real property, erecting a medical office building thereon, and renting the offices to members of the medical profession, including themselves and others. In 1976, the three partners individually acquired the property. In 1978, the three partners obtained a commitment from a bank for a loan for the construction of the building. The lending institution insisted that the mortgagor be a corporation, but agreed that after the mortgage was executed and recorded, the corporation had the lender's permission to convey the title to the real property back to the partners without violating any provisions of the mortgage.

Petitioner was incorporated on May 4, 1978 to meet the requirement of the lending institution. On July 6, 1978, the three partners executed a deed for the realty to the corporation and on the same day, the corporation executed and delivered its mortgage on the realty to the lender. Using the loan proceeds, the building was constructed and the suites were rented to tenants.

Because it was their plan from inception to own and operate the property as a partnership, and not as a corporation (the reason they negotiated for and obtained the lender's consent to the conveyance of the property back to the partners as partners), each and all of the partners believed that to have, in fact, been done. All leases were executed with the partnership as the landlord. The corporate bank account was closed. The partners believed Petitioner to have been dissolved. The partners were advised by the partnership's accountant that Petitioner was dissolved prior to December 31, 1979. The accountant had, in fact, certified to the State of New York that the corporation was defunct on November 14, 1979 by returning a Notice of Failure to File Corporation Tax Form duly noted to that effect.

Ever since 1979, the entire operation of the business of the partners was transacted as a partnership. Believing Petitioner to have been dissolved, the partners also assumed the realty had been reconveyed to the partnership. At no time thereafter did Petitioner transact any business activity whatsoever.

Upon the attempt to dissolve the partnership it was discovered that the title to the real property had never been reconveyed, and that the dissolution of Petitioner was not completed in 1979 as believed, but was dissolved by proclamation in September 1982 with such dissolution filed in the County Clerk's Office on November 12, 1982.

Section 209.1 of the Tax Law imposes 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 (hereinafter "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. Section 1-2.2 of the 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.

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. 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, for the taxable years during which Petitioner was incorporated, May 4, 1978 through September 1982, Petitioner is subject to the franchise tax imposed by Article 9-A of the Tax Law, pursuant to section 209.1 of the Tax Law. After its dissolution by proclamation in September 1982, Petitioner was merely holding property as nominee for the benefit of others and was 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 after it was dissolved by proclamation.

DATED: May 7, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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