

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

TSB-A-91(7)C
Corporation Tax
March 18, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C900828A

On August 28, 1990, a Petition for Advisory Opinion was received from 20th Century Realty Company, c/o McNulty-Spiess, 633 E. Main Street, P.O. Box 757, Riverhead, New York 11901.

The issue raised by Petitioner, 20th Century Realty Company, is whether it is subject to tax under Article 9-A and whether it is entitled to a release of lien of the New York State Franchise Tax for the years 1926 to date where Petitioner was dissolved in 1926 and has not conducted business in New York State subsequent to dissolution but is the record owner of real property located in New York State.

Petitioner was created and organized under the laws of New York State relating to the organization of stock corporations. It was incorporated on March 8, 1904. Petitioner's certificate of incorporation provides that Petitioner was formed to carry on the business of real estate brokers, appraisers, operators, sub-dividers and builders in all its branches and in addition thereto to do all and everything capable of being done and performed in connection with and necessary for or convenient to the carrying on of a general real estate business. Also, to take, acquire, hold, purchase, own, buy, lease, sell, let, transfer, mortgage, exchange, improve and otherwise deal in and dispose of all such real estate as is necessary or convenient for the purposes of conducting and carrying on or disposing of its business.

Prior to its dissolution, Petitioner acquired title to certain unimproved property in Suffolk County, New York. Petitioner ceased to do business after it was dissolved by Proclamation of the Secretary of State on March 13, 1926. By Order dated April 18, 1990, the New York State Supreme Court ratified George L. Schmelzer and Inge Schmelzer as directors of Petitioner for the purpose of terminating the affairs of Petitioner. It appears that the dissolved Petitioner is the record title holder of certain real property located in Suffolk County for the benefit of its shareholders or their assignees and that said real property has not been distributed to the aforesaid shareholders or their successors in interest. Petitioner has not conducted business in New York State, as contemplated under section 209.3 of the Tax Law, after it was dissolved.

For the taxable years Petitioner was incorporated, real estate corporations were subject to tax under section 182 of the Tax Law. Section 182 of the Tax Law, in effect on the date of dissolution by proclamation, provided as follows:

The term "corporation" as used in this section shall include any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificates or other written instruments. For the privilege of exercising its corporate franchises in this state every domestic corporation, joint stock company or association, and for the privilege of doing business in this state, every foreign corporation, joint stock company or association, shall pay annually, in advance, an annual tax to be computed upon the basis of the amount of its capital stock, employed during the preceding year within this state, and upon each dollar of such amount

Section 182 of the Tax Law was amended by the Laws of 1926, Chapter 674 in effect April 29, 1926 to provide that a domestic corporation is subject to tax for the privilege of holding property in New York State. However, Petitioner was dissolved prior to this amendment. On the date of Petitioner's dissolution by proclamation, the corporation ceased to exist. There were no provisions in the Tax Law at that time to continue to tax a dissolved real estate corporation because it continued to hold title to property in New York State.

Therefore, Petitioner was not subject to tax under section 182 of the Tax Law from the date of dissolution, March 13, 1926, to December 31, 1961, the date section 182 of the Tax Law was repealed. After such repeal, real estate corporations became subject to tax under Article 9-A of the Tax Law. Since Petitioner was not a corporation subject to tax under section 182 of the Tax Law at the time of its repeal, Petitioner never became subject to tax under Article 9-A of the Tax Law.

Accordingly, since Petitioner was dissolved by Proclamation of the Secretary of State on March 13, 1926, Petitioner is not subject to tax under section 182 of Article 9 or under Article 9-A of the Tax Law for any taxable year subsequent to the date of dissolution. Therefore, a release of lien for such years should be granted.

DATED: March 18, 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.