

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-00(11)C  
Corporation Tax  
April 24, 2000

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C000125A

On January 25, 2000, a Petition for Advisory Opinion was received from Grapemount Corporation, N.V., c/o Yoshizaki & Sklar, LLP, 250 West 57<sup>th</sup> Street, Suite 1723, New York, New York 10107.

The issue raised by Petitioner, is whether it is subject to franchise tax under Article 9-A of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a corporation incorporated under the laws of Delaware. Petitioner received two parcels of real estate as a capital contribution from a shareholder. One property is located in New York State (original value \$169,000) and the other is located in California (original value \$156,000). These two properties have been held for investment purposes only (not depreciable assets). The properties have never been rented nor used for business.

Petitioner has never conducted any business, and has never had any employees. The assets of Petitioner total \$640,412 and consist of \$17,109 cash in banks, \$298,303 loans receivable and \$325,000 in the two property investments.

**Discussion**

Section 209.1 of the Tax Law imposes, annually, 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 1-3.2(d) of the Article 9-A Regulations provides that:

[t]he owning or leasing of real or personal property within New York State constitutes an activity which subjects a foreign corporation to tax. Property owned by or held for the taxpayer in New York State, whether or not used in the taxpayer's business, is sufficient to make the corporation subject to tax. Property held, stored or warehoused in New York State creates taxable status. Property held as a nominee for the benefit of others creates taxable status....

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Pursuant to section 209.1 of the Tax Law and section 1-3.2(d) of the Article 9-A Regulations, the ownership of real or tangible personal property located in New York State is sufficient to make a corporation subject to the franchise tax imposed under Article 9-A of the Tax Law even though the corporation is not deemed to be doing business in New York State.

In this case, Petitioner does not conduct business in New York and does not have any employees in New York, and it is not deemed to be doing business in New York. However, Petitioner does hold real property in New York for investment purposes. Accordingly, pursuant to section 209.1 of the Tax Law and section 1-3.2(d) of the Article 9-A Regulations, Petitioner is subject to tax under Article 9-A of the Tax Law for all years its holds real property in New York State, and must file a franchise tax return for each taxable year that it holds such real property.

DATED: April 24, 2000

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Division

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