

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

TSB-A-86 (7) C
Corporation Tax
March 24, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C851212C

On December 12, 1985 a Petition for Advisory Opinion was received from Service Employees Local 200 Building Corp., 3060 Erie Boulevard East, Syracuse, New York 13201.

The issue raised is whether the corporation is exempt from the franchise tax imposed by Article 9-A of the Tax Law.

Petitioner states that it is a non-stock corporation that merely holds title to real property for Service Employees Local 200. Petitioner operates on a non-profit basis and no part of the net earnings of which inures to the benefit of any officer, director, or member. Petitioner is a corporation described in Section 501(c)(2) of the Internal Revenue Code. Petitioner believes that it should be exempt from the New York State franchise tax pursuant to Business Corporation Franchise Tax Regulation section 1-3.4(b)(6)(i).

Section 209.1 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 of the Business Corporation Franchise Tax Regulations describes corporations that are not subject to Article 9-A of the Tax Law and subdivision (b) of such section states, in part:

"...(6) 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 non-profit 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.

(i) 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. If a corporation organized other than for profit is denied exemption from taxation under the Internal Revenue Code, such corporation will be presumed subject to tax under article 9-A.

(ii) The determination of the Internal Revenue Service, denying or revoking exemption from Federal taxation under the Internal Revenue Code, will ordinarily be followed...." 20 NYCRR 1-3.4(b)(6).

Section 501(a) of the Internal Revenue Code exempts from Federal income taxation organizations described in subsection(c) of Section 501 unless such exemption is denied under Section 502 or 503 of the Internal Revenue Code.

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Since Petitioner is a non-stock corporation that is operated on a non-profit basis and no part of its net earnings inures to the benefit of any officer, director or member, and which is exempt from Federal income tax pursuant to section 501(a) of the Internal Revenue Code, Petitioner falls within the ambit of section 1-3.4(b)(6) of the Business Corporation Franchise Tax Regulations and is not subject to the tax imposed under Article 9-A of the Tax Law.

However, if pursuant to section 511 of the Internal Revenue Code, Petitioner has any unrelated business taxable income, Petitioner may be subject to the tax imposed under Article 13 of the Tax Law on unrelated business income.

DATED: March 24, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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