

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

TSB-A-88 (19)C
Corporation Tax
September 1, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C880620A

On June 20, 1988, a Petition for Advisory Opinion was received from Babson Bros. Co. of New York Inc., 223 Brattle Road, Syracuse, New York 13203.

The issue raised is whether Petitioner, a dissolved corporation, is entitled to a release of lien of New York State Corporation Franchise Tax and whether the corporation is required to file a corporation franchise tax report and pay tax and penalties for taxable years 1980 through 1988, where at the time of dissolution Petitioner held title to real property as nominee for various individuals.

In 1971, Paul William Kelley, Jr. (hereinafter referred to as "Kelley") obtained through cooperation of various Individuals, including Petitioner, an agreement to enter into a joint venture agreement to purchase three contiguous parcels of land located in the Town of Cicero, County of Onondaga, State of New York. Petitioner would take title to the real property and purchase it for and on behalf of the Venture. The expenses of purchasing the property was determined on the basis of a contract consisting of 20 shares of participation with each participant paying the sum of \$3,100.00 upon the issuance of a share and to pay an additional \$1,000.00 per year per share (the annual payment would be applied to pay off existing mortgages and taxes or other expenses incurred). All moneys would be paid to Petitioner. Each share represented an undivided one-twentieth share in the total acreage involved. Petitioner would hold title in its name as the nominee for the members of the Venture.

The members of the Venture had been friends and acquaintances for a number of years and agreed orally that the original payment per share would be made, the property purchased and that a joint venture agreement be drafted between Petitioner and Kelley who would thereafter co-issue certificates of participation in the "joint venture agreement". The members of the Venture made their payments to Petitioner based on the number of shares which were to be issued to that participant after the agreement was drafted so that Petitioner would be able to purchase the real property hereinbefore mentioned.

The board of directors of Petitioner held a meeting on November 1, 1978 and adopted a plan of dissolution of Petitioner. A specific resolution was adopted with reference to property held in the name of Petitioner which was not a corporate asset but held in the name of Petitioner for the beneficial interest of any other person, firm or corporation. The resolution provided as follows:

"RESOLVED, that the said President and/or proper officer be and hereby are authorized to assign and transfer any asset held in the name of the corporation for the beneficial interest of any person, firm or corporation, such interest to that person, firm or corporation as their interests appear by reason of any contracts executed by this corporation or to George L. Babson, Jr. on behalf of those holding such beneficial interests,"

The board of directors further resolved that a certificate of dissolution be filed with the Secretary of State of the State of New York.

A special meeting of the stockholders of Petitioner was held on November 2, 1978 for the purpose of taking action on the dissolution of Petitioner in accordance with the resolution of dissolution recommended by the board of directors. All stockholders were present and unanimously resolved to adopt the plan of liquidation adopted by the board of directors and directed that the proper officers be authorized and directed to file a certificate of dissolution pursuant to Section 1003 of the Business Corporation Law of the State of New York with the Secretary of State of the State of New York.

A final corporation franchise tax report for the taxable period beginning December 1, 1978 and ending January 31, 1979 was filed with the New York State Department of Taxation and Finance together with the certificate of dissolution.

All participants, both prior and subsequent to the dissolution of Petitioner, continued to make annual payments, including their pro-rata share of taxes when assessed. Because of the number of people involved, a determination was made to continue to hold the property in the name of Petitioner rather than execute deeds to the individuals for fractional shares of the three properties involved. The three properties are assessed by the County of Onondaga and the Town of Cicero as a single parcel to Petitioner. The taxes and other expenses are paid by the participants on a pro-rata basis based upon the number of shares owned by each participant to Babson who, in turn, pays taxes and other expenses for participants. Most of the property was declared to be "Wetlands". Petitioner has not engaged in any business activity since dissolution. No other asset, other than the real property herein mentioned, is in the corporate name. Petitioner has no beneficial interest in the real property and has had no beneficial interest in said real property since dissolution nor prior thereto since the acquisition of the property.

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.

TSB-A-88 (19)C
Corporation Tax
September 1, 1988

Accordingly, after it was dissolved, 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, and is entitled to a release of lien of New York State Corporation Franchise tax for taxable years 1980 through 1988.

DATED: September 1, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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