

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

TSB-A-92 (8) C
Corporation Tax
April 6, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C920127E

On January 27, 1992, a Petition for Advisory Opinion was received from Vi-Toria Building Corp., 26-41 202nd Street, Bayside, New York 11361.

The issue raised by Petitioner, Vi-Toria Building Corp., is whether it is subject to tax under Article 9-A of the Tax Law for taxable years 1981 through 1991.

Petitioner was incorporated in 1964 with its only asset a parcel of real estate. The owner of the corporate shares was Mr. Ignzaio Testani. The property was operated by Petitioner from 1964 through July 10, 1980. On July 10, 1980 Mr. Testani died. Mrs. Testani inherited all of Mr. Testani's assets which included the property as well as the corporate stock. Her attorney and accountant advised her to dissolve Petitioner and distribute the property to herself as an individual. Mrs. Testani agreed and entrusted her accountant and attorney with filing the appropriate papers. Through miscommunication, filing of the appropriate dissolution papers was apparently overlooked.

The corporation income tax return for 1980 was prepared by the accountant indicating a final filing. The ending balance sheet indicated Petitioner had no assets and no liabilities. The property was no longer depreciated by Petitioner. Petitioner stopped collecting rents, paying bills, signing leases with tenants and closed its checking account.

As of July 10, 1980, Mrs. Testani managed the property and received the rents as an individual. She reported the activity of the property on her individual income tax returns. She executed leases as an individual owner.

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.

In Hightmount Medical Building Inc., Adv Op Comm T&F, May 7, 1991, TSB-A-91(12)C, the Commissioner advised under similar circumstances, that the petitioner was subject to tax under Article 9-A of the Tax Law for all taxable years until it was dissolved by proclamation.

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Herein, Petitioner has not been dissolved, either by voluntary dissolution or dissolution by proclamation. Therefore, pursuant to section 209.1 of the Tax Law and section 2-3.1 of the Regulations, Petitioner is subject to the franchise tax under Article 9-A of the Tax Law for all taxable years in which it is incorporated, including taxable years 1981 through 1991.

DATED: April 6, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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