

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

TSB-A-94 (16) C  
Corporation Tax  
December 20, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO C940811F

On August 11, 1994, a Petition for Advisory Opinion was received from Robert W. Hawxhurst, individually and as surviving spouse and executor of estate of sole shareholder, officer and director of Holver Realty Corp., 76 Scotts Landing Road, Southampton, New York 11968.

The issue raised by Petitioner, Robert W. Hawxhurst, individually and as surviving spouse and executor of estate of sole shareholder, officer and director of Holver Realty Corp., is whether Holver Realty Corporation is subject to New York State franchise tax under Article 9-A of the Tax Law for taxable years 1980 to date.

Holver Realty Corporation was incorporated in New York State on January 9, 1947. It was a family corporation whose sole shareholders in 1976 were Herbert Oliver and his sister, Isabelle Hawxhurst, the surviving spouse of Petitioner. The corporation had acquired title to real estate and, as of December 15, 1976, the date of death of Herbert Oliver, the corporation owned nine parcels. All but one of these parcels were vacant.

With the death of Herbert Oliver, the corporation became less active, and the remaining sole shareholder, president and secretary of the corporation, Isabelle Hawxhurst, decided to dissolve the corporation. Mrs. Hawxhurst executed a Certificate of Dissolution on October 18, 1979 which was filed with the Department of State on January 25, 1980. The Department of Taxation and Finance Corporation Tax Bureau, consented to the dissolution on January 11, 1980.

Since its dissolution in 1980, the corporation has been completely inactive, conducting no business in New York State. The sole shareholder, Isabelle Hawxhurst, and her family, assumed that all of the corporation's assets had been distributed pursuant to the dissolution. Thus, although the real estate tax bills were issued in the name of Holver, those who paid them, Mrs. Hawxhurst and thereafter, her husband (Petitioner) and son-in-law, were under the impression that the County records had simply not been updated to reflect the dissolution and transfer of title.

Upon the death of Isabelle Hawxhurst on September 27, 1984, her estate was probated; New York State and Federal estate tax returns were filed; and the taxes due thereon were paid. Included on those returns were four parcels of real state previously held in the name of Holver and assumed to have been transferred to Isabelle Hawxhurst in connection with the dissolution.

That title to the four parcels still remained in the name of Holver was not discovered until February 1994 when Petitioner's new attorneys ordered title searches in connection with estate planning which was being undertaken for Petitioner. In connection with that review,

Petitioner's attorneys discovered a deed which appeared to have been simultaneously executed with the certificate of dissolution. That deed, conveyed 132 Mill Pond Road from Holver Realty Corporation to Isabelle Hawxhurst and contained the statement that it was executed in connection with the dissolution of the transferor corporation. Due to an apparent oversight, this deed was never recorded.

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 ("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 1-2.4 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. Bernice E. Bouton, Adv Op Comm T & F, October 13, 1992, TSB-A-92(14)C; Highmount Medical Building Inc., Adv Op Comm T & F, May 7, 1991, TSB-A-91(12)C; Harold S. Sommers, Adv Op Com T & F, March 15, 1990, TSB-A-90(9)C; Babson Bros. Co. of New York Inc., Adv Op Comm T & F, September 1, 1988, TSB-A-88(19)C.

Accordingly, after its voluntary dissolution on January 25, 1980 with the consent of the Department of Taxation and Finance, Holver Realty Corporation 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, Holver Realty Corporation is not subject to tax under Article 9-A after it was voluntarily dissolved.

DATED: December 20, 1994

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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