

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

TSB-A-96 (1) C  
Corporation Tax  
January 2, 1996

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C950823A

On August 23, 1995, a Petition for Advisory Opinion was received from Clean At Tri-Diamond Stores, Ltd., 110 Van Siclen Avenue, Brooklyn, New York 11207.

The issue raised by Petitioner, Clean At Tri-Diamond Stores, Ltd., is whether Petitioner is subject to franchise tax under Article 9-A of the Tax Law after it discontinued active business operations and after it was dissolved by proclamation.

Petitioner presents the following facts. Petitioner was incorporated in New York on October 9, 1963. The shareholders were Ernest Ciarrotta, Steve Xenidis and Saverio Valentino.

On June 10, 1971, Petitioner acquired title to the premises located at 110 Van Siclen Avenue, Brooklyn, New York, Block 3946, Lot 24. The premises were and still are improved by a two-story dwelling. The first floor consisted of Petitioner's dry cleaning business operations until 1978 and from then on Mr. Xenidis' laundromat business. The second and third floors consist of residential apartments.

In 1978, Steve Xenidis became the sole shareholder of Petitioner after both Mr. Ciarrotta and Mr. Valentino had passed away. At that time in 1978, Petitioner discontinued the dry cleaning business and all active business operations. Since 1978 to the present time, Petitioner has not conducted any business operations whatsoever.

At or about that same time in 1978, Mr. Xenidis installed a laundromat on the first floor of the subject premises. Mr. Xenidis operated the laundromat in his personal capacity. At that time, he thought that Petitioner had been dissolved because it was no longer conducting any corporate business operations.

From 1978 until the present time, Mr. Xenidis believed that he was the owner of the subject premises. He personally paid the real estate taxes and water and sewerage charges for the premises located at 110 Van Siclen Avenue. The water and tax bills are in his personal name. From 1978 to the present, Mr. Xenidis also operated the laundromat in his personal capacity. Additionally, he personally collected all rent from the premises.

Mr. Xenidis' accountant, Mr. Magro, a CPA, had advised Mr. Xenidis in 1978 that Petitioner was dissolved, and that nothing further had to be done.

In February of 1993, Mr. Xenidis entered into a contract to sell the subject premises. The purchaser ordered a title report and Mr. Xenidis learned for the first time that the title to the subject premises is still in the name of Petitioner and that Mr. Xenidis was not the record owner as he had

believed. Upon further investigation, it was determined that formal dissolution of Petitioner had not been accomplished in 1978, as believed, and that Petitioner was dissolved by proclamation on September 29, 1982 for failure to pay corporate franchise taxes.

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 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 of the Tax Law. Section 1-2.4 of the Business Corporation Franchise Tax 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. W.R.H.R.E Corp., Adv Op Comm T & F, March 3, 1995, TSB-A-95(4)C; Highmount Medical Building Inc., Adv Op Comm T & F, May 7, 1991, TSB-A-91(12)C; Harold S. Sommers, Adv Op Comm 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, for the taxable years during which Petitioner was incorporated, October 9, 1963 through September 29, 1982 the date of dissolution by proclamation, Petitioner is subject to the franchise tax imposed by Article 9-A of the Tax Law, pursuant to section 209.1 of the Tax Law. After its dissolution by proclamation on September 29, 1982, 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 of the Tax Law after it was dissolved by proclamation.

DATED: January 2, 1996

s/DORIS S. BAUMAN  
Director  
Technical Services Bureau

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