

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

TSB-H-80-(244)-I
Income Tax
August 26, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION #I800610B

On June 10, 1980, a Petition for Advisory Opinion was received from Albert Kutzin, 358 Fifth Avenue, New York, New York 10022.

The issue raised is whether a partnership which makes financial investments for its own account only and has no customers is subject to the New York State Unincorporated Business Income Tax imposed under Article 23 of the Tax Law.

Petitioner describes a partnership which engages in various financial transactions consisting of the buying and selling of "stocks, options, financial futures; risk arbitrage; commodities, etc." All of such trading by the partnership is solely for its own account. The partnership has no customers and thus earns no income in the form of commissions.

Section 701(a) of the Tax Law imposes a tax on "...the unincorporated business taxable income of every unincorporated business wholly or partly carried on within this state." Section 703(a) of the Tax Law defines the term "unincorporated business" as "...any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership or fiduciary or a corporation in liquidation,..." with certain exclusions not relevant here.

Section 703(d) of the Tax Law provides that any "...individual or other unincorporated entity, except a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed engaged in an unincorporated business solely by reason of the purchase and sale of property or the purchase, sale or writing of stock option contracts, or both, for his own account..." However, the Unincorporated Business Income Tax regulations do provide that where there is an investment "...in the purchase of an operating unincorporated business...or other unincorporated activity of the type where the carrying on of business is necessary to realizing on the investment..., even though only a limited amount of time, thought and energy may be directed to the activity by an individual taxpayer or by the members of a partnership or other unincorporated entity..." such active involvement in the conduct of the business or activity just described would render the investor subject to tax. 20 NYCRR 203.1(b)

Accordingly, a partnership whose activity consists of the making of financial investments solely for its own account, which has no customers and which does not carry on business as described in the above-quoted portion of 20 NYCRR 203.1(b) will not be subject to the Unincorporated Business Income Tax imposed under Article 23 of the Tax Law.

Dated: July 29, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau