

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

TSB-A-97(1)C
Corporation Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C960919C

On September 19, 1996, a Petition for Advisory Opinion was received from Heller Bros. Packing Corp., P.O. Box 770249, Winter Garden, Florida 34777-0249.

The issue raised by Petitioner, Heller Bros. Packing Corp., is whether it is subject to tax under Article 9-A of the Tax Law because of its ownership of a limited partnership interest in a limited partnership doing business in New York State.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a Florida corporation not doing business in New York State. Petitioner owns a 5.8824 percent limited partnership interest in West 54th Street Partners LP ("West"). West owns commercial rental property in New York State. Petitioner invested \$500,000 in West. Petitioner maintains that neither it nor its officers, directors, or affiliates have any connection with West.

Section 209.1 of the Tax Law imposes an annual franchise tax on a domestic or foreign corporation for the privilege of exercising its corporate 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 1-3.2(a)(6) of the Business Corporation Franchise Tax Regulations ("Article 9-A Regulations") provides, in part, that:

(i) A foreign corporation is doing business, employing capital, owning or leasing property or maintaining an office in New York State if it is a limited partner of a partnership, other than a portfolio investment partnership, which is doing business, employing capital, owning or leasing property or maintaining an office in New York State and if it is engaged directly or indirectly, in the participation in or the domination or control of all or any portion of the business activities or affairs of the partnership. A foreign corporation is engaged in such manner in the business activities or affairs of the partnership if one or more of certain factual situations, including but not limited to the following, exist during the taxable year or, except for clause (a) of this subparagraph, any previous taxable year.

(a) The foreign corporation has a one percent or more interest as a limited partner in a partnership and/or the basis of the foreign corporation's interest in the limited partnership, determined pursuant to section 705 of the Internal Revenue Code, is

more than \$1,000,000. For purposes of determining whether the level of interest in the partnership or level of basis of the interest in the partnership is met, the percentage of interest in the partnership and basis of interest in the partnership of members of the foreign corporation's affiliated group, of officers or directors of the foreign corporation or of officers or directors of members of the foreign corporation's affiliated group are added to the foreign corporation's interest in the partnership or the basis of its interest in the partnership, respectively....

The provisions of section 1-3.2(a)(6)(i)(a) of the Article 9-A Regulations apply to taxable years ending on or after July 11, 1990.

In this case, Petitioner states that it owns a 5.8824 percent limited partnership interest in West. Pursuant to section 1-3.2(a)(6)(i)(a) of the Article 9-A Regulations, Petitioner is engaged, directly or indirectly, in the participation in or the domination or control of all or any portion of the business activities or affairs of the partnership. Since the limited partnership is doing business in New York State, Petitioner is doing business, employing capital, owning or leasing property or maintaining an office in New York State because of its ownership interest in the limited partnership. Accordingly, pursuant to section 209.1 of the Tax Law, Petitioner is subject to the franchise tax imposed under Article 9-A of The Tax Law.

DATED: January 2, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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