

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

TSB-H-81-(56)-I  
Income Tax  
April 24, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I810203A

On February 3, 1981, a Petition for Advisory Opinion was received from Victor H. Braca, c/o Coopers & Lybrand, 1251 Avenue of the Americas, New York, New York 10020.

The issues raised are (1) whether a partnership purchasing and selling commodities and commodity future contracts for the benefit of its own account only and having no customers is subject to the Unincorporated Business Income Tax imposed under Article 23 of the Tax Law and (2) where a member of such partnership is a nonresident of New York State, whether his distributable share of partnership income will be subject to the Personal Income Tax imposed under Article 22 of the Tax Law.

Petitioner describes a partnership engaging in trading and investing in spot commodities and commodity futures contracts. The partnership is not a dealer holding property primarily for sale to customers but is purchasing and selling such property for the benefit of its own account.

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..."

Section 632(a) of the New York Tax Law provides that the New York adjusted gross income of a nonresident individual shall be the net amount of items of income, gain, loss, and deduction entering into his federal adjusted gross income derived from or connected with New York sources. Section 632(b) provides that items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

1. The ownership of any interest in real or tangible personal property or
2. A business, trade, profession or occupation carried on in this state.

Section 632(b)(2) of the Tax Law states that income from intangible personal property, including interest, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state.

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
FRANK J. PUCCIA, DIRECTOR

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Accordingly, since all investments are made solely for the benefit of the partnership and the partnership does not engage in the purchase and sale of investments on behalf of customers, the partnership described has no liability for the Unincorporated Business Income Tax imposed under Article 23 of the Tax Law. A member of such partnership who is a nonresident of New York is not subject to the Personal Income Tax imposed under Article 22 of the Tax Law with respect to such partnership income, because the distributable share of partnership income is not related to:

1. The ownership of any interest in real or tangible personal property or
2. A business, trade, profession or occupation carried on in this state.

DATED: April 2, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau