

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

TSB-A-88 (11) I  
Income Tax  
June 28, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I880309A

On March 9, 1988, a Petition for Advisory Opinion was received from Kenneth S. Davidson Partners, 767 5th Avenue, New York, New York, 10153.

The issues raised are (1) whether the purchase and sale by the Petitioner, for its own account, of futures contracts on commodities, foreign currencies, debt obligations, indexes and eurodollars will cause the Petitioner to be engaged in a business, trade, profession or occupation in New York State within the meaning of Section 631 of the Tax Law and (2) whether the writing, by Petitioner, of options on indexes, foreign currencies, debt obligations and futures contracts and the exercise, closing out or expiration of such options will cause the Petitioner to be engaged in a business, trade, profession or occupation in New York State within the meaning of Section 631 of the Tax Law.

Petitioner has described a partnership engaged in the purchase and sale of futures contracts and writing options on financial instruments. This partnership is not a dealer but is purchasing and selling futures contracts and writing options on financial instruments solely for the benefit of its own account.

Section 631 of the Tax Law states, in part, that an individual partner of a partnership who is a nonresident of New York State is subject to the New York State Income tax on the portion of his distributive share of partnership income which is derived from or connected with New York sources. For the purposes of Section 631, income derived from New York sources shall be attributable to a business, trade, profession, or occupation carried on in this state.(Section 631(b) (1) (B)).

Section 631(d) of the Tax Law provides:

A nonresident, other than a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed to carry on a business, trade, profession or occupation in this state 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.

The legislative history of Section 631 provides that it was enacted to encourage active trading on the exchanges in New York "without concern that such activities might constitute engaging in a business in this State and thus subject to ... taxes." (New York State Legislative Annual, (1976) p. 339.) For this reason the original Section 631 was expanded from covering stock and other securities to include stock options.

The type of activities described by the Petitioner are similar to the writing of stock options. They are traded in the same manner as the stocks and stock options explicitly referred to in Section

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631. In keeping within the Legislature's intent of encouraging active trading on the exchanges in New York, trading activities similar in nature to trading in stock options will be afforded similar treatment under Section 631. Accordingly, the purchase and sale by the Petitioner, for its own account, of futures contracts on commodities, foreign currencies, debt obligations, indexes and euro dollars and the writing, by Petitioner, of options on indexes, foreign currencies, debt obligations and futures contracts and the exercise, closing out or expiration of such options solely for its own account will qualify for the exception from trade or business status set forth in Section 631.

It should be noted, however, that Petitioner will not be considered to be purchasing and selling solely for its own account if it engages in other activities such as market making activities. Should Petitioner engage in such other activities, it would be deemed to be carrying on a trade or business within the state.

DATED: June 28, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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