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

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Corporation Tax
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OPINION OF COUNSEL
TAXATION OF NONRESIDENT CORPORATE LIMITED PARTNERS

March 23, 1987

This is in response to your inquiry as to whether a foreign corporation, which is not otherwise subject to tax in New York State, becomes subject to the franchise tax imposed by Article 9-A of the New York Tax Law solely by virtue of becoming a limited partner in a limited partnership which is "doing business" in New York State under the following circumstances.

Interests, which for New York State tax purposes are considered limited partner interests, are issued pursuant to a "public offering", as that term is construed under the Federal Securities Act of 1933 (the Securities Act). The limited partner interests are offered for sale, by the issuer, to members of the general public. The interests are then freely transferable, with only minor or extraordinary restrictions placed upon transferability (for example, when transfers must be deferred to avoid premature termination of the partnership for tax purposes, or when a transfer would be restricted under Federal or state securities laws). No limited partner owns a majority interest in the partnership.

The limited partnership is required to and does file its offering in accordance with the registration requirements of the Securities Act and complies with all applicable Securities and Exchange Commission rules and regulations. Similarly, the limited partnership is required to and does comply with the periodic reporting requirements imposed by the Federal Securities Exchange Act of 1934 (the Exchange Act). The limited partnership has never had available to it any statutory or regulatory exemption or suspension of "the duty to file" (such as that granted by 15 USC § 78o(d)) as regards the registration or reporting requirements of either the Securities Act or the Exchange Act.

Section 209.1 of Article 9-A of the New York Tax Law imposes an annual franchise tax on domestic or foreign corporations for the privilege of exercising a corporate franchise, doing business, employing capital, owning or leasing property in a corporate or organized capacity, or maintaining an office, in New York State. In interpreting this section, Franchise Tax Regulation 1-3.2(a)(2) sets forth a general rule which holds that if a partnership is exercising any of the privileges of section 209.1, then all of its corporate partners are subject to the tax imposed by Article 9-A.

I am of the opinion that a foreign corporate limited partner, in the circumstances described above, is outside of the general rule and is not "doing business" in New York, for purposes of section 209.1 of the Tax Law, notwithstanding the fact that the partnership is "doing business" in the State. Nor is the foreign corporate limited partner doing any of the other activities, set forth in section 209.1, which would subject it to the Article 9-A franchise tax.

I would like to emphasize that this opinion is restricted to a partnership interest, in the circumstances described above, which is owned by a foreign corporation in the capacity of a limited partner. That is to say, my opinion does not extend to a foreign corporate general partner in the above circumstances.

s/John P. Dugan
Deputy Commissioner and Counsel