

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(7)C
Corporation Tax
April 3, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C991201B

On December 1, 1999, a Petition for Advisory Opinion was received from CitiFunds¹, c/o Ronald P. Cima, Esq., Greenberg Traurig, 200 Park Avenue, 15th Floor, New York, New York 10166.

The issues raised by Petitioners, CitiFunds, are:

1. Whether a non-U.S. fund, such as a Cayman or Irish fund, described below as a “Spoke fund” or feeder fund, would be deemed to be doing business, employing capital, owning or leasing property or maintaining an office in New York State by virtue of the fact that it is a partner in a partnership which is present in New York City, described below as a “Hub fund”, but whose only business activities are investing or trading stocks, securities or commodities within the meaning of the exclusion described in section 209.2-a of the Tax Law.
2. Whether the non-U.S. Spoke funds, as described below, could continue to be exempt from New York taxation if such non-U.S. Spoke funds, as well as the Hub funds, as described below, were to hold some or all of the board, investor and committee meetings in New York City.

¹ The collective name for the following 18 funds. Three of the funds are: Asset Allocation Portfolios; Cash Reserve Portfolios; and The Premium Portfolios. The address for these funds is: c/o Signature Financial Group (Cayman) Ltd., P.O. Box 2494, Elizabethan Square, George Town, Grand Cayman, Cayman Islands, British West Indies.

The other 15 funds are : Citi Emerging Asian Markets Equity Portfolio, Ltd.; CitiFunds Balanced Portfolio, Ltd.; CitiFunds Growth & Income Portfolio, Ltd.; CitiFunds Institutional Liquid Reserves, Ltd.; CitiFunds Intermediate Income Portfolio, Ltd.; CitiFunds International Growth Portfolio, Ltd.; CitiFunds Large Cap Growth Portfolio, Ltd.; CitiFunds Liquid Reserves, Ltd.; CitiFunds Premium Liquid Reserves, Ltd.; CitiFunds Short-Term U.S. Government Income Portfolio, Ltd.; CitiFunds Small Cap Growth Portfolio, Ltd.; CitiSelect Ltd Folio 200; CitiSelect Ltd Folio 300; CitiSelect Ltd Folio 400; and CitiSelect Ltd Folio 500. The address for these funds is: c/o Maples And Calder, P.O. Box 309, Ugland House, George Town, Grand Cayman, Cayman Islands, British West Indies.

3. Whether investors in stocks, securities and commodities, who invest only in property qualifying for the self-trading exemption from New York City's unincorporated business tax, as defined in section 11-502(c)(1)(a) of the New York City Administrative Code – property qualifying as investment capital (stocks, bonds and other securities), other stocks, notes, bonds, debentures and other evidences of indebtedness; interest rate, currency or equity notional principal contracts; foreign currencies; interests in or derivative financial instruments (including options and forward or futures contracts, short positions and similar financial instruments) in such property; and publicly traded commodities – are investing or trading stocks, securities or commodities for purposes of the exclusion provided in section 209.2-a of the Tax Law.

Petitioners submit the following facts as the basis for this Advisory Opinion.

Petitioners are a mutual fund family, with assets of approximately \$15 billion, which uses the Hub and Spoke² master-feeder investment fund structure. This structure consists of New York common law trusts that are treated as partnerships for federal income tax purposes. The trusts, known as Hub funds, each hold a portfolio of securities (and some commodities) that may consist of several series. The regulated investment companies (or mutual funds) and Cayman Island or Irish mutual funds (all of which are known as Spoke funds or feeder funds) are investors in the Hub funds. The investors are treated as partners for federal income tax purposes.

The three Hub funds and their series are:

1. Asset Allocation Portfolios (“AAP”) includes the following series:

- Short-Term Portfolio
- Intermediate Income Portfolio
- Foreign Bond Portfolio
- Small Cap Value Portfolio
- Large Cap Value Portfolio
- International Portfolio

2. Cash Reserve Portfolios (“CRP”)

² Hub and Spoke is a registered service mark of Signature Financial Group, Inc. The terms, “Hub” and “Spoke”, also are registered service marks of Signature Financial Group, Inc.

3. The Premium Portfolios (“TPP”) includes the following series:

Emerging Asian Markets Equity Portfolio
Balanced Portfolio
Growth & Income Portfolio
U.S. Fixed Income Portfolio
International Equity Portfolio
Large Cap Growth Portfolio
Government Income Portfolio
Small Cap Growth Portfolio
High Yield Portfolio

Petitioner states that the 15 Spoke funds, which are the non-U.S. offshore funds, meet the definition of a corporation for purposes of section 208.1 of the Tax Law. Petitioners also state that the Spoke funds’ only business activities in New York are investing or trading stocks, securities or commodities for their own account, through their investments in the Hub funds, within the meaning of section 209.2-a of the Tax Law. The Spoke funds and the Hub fund in which each invests are:

Spoke Fund	Hub Fund
Citi Emerging Asian Markets Equity Portfolio, Ltd.	Series of the TPP
CitiFunds Balanced Portfolio, Ltd.	Series of TPP
CitiFunds Growth & Income Portfolio, Ltd.	Series of TPP
CitiFunds Institutional Liquid Reserves, Ltd.	CRP
CitiFunds Intermediate Income Portfolio, Ltd.	Series of TPP
CitiFunds International Growth Portfolio, Ltd.	Series of TPP
CitiFunds Large Cap Growth Portfolio, Ltd.	Series of TPP
CitiFunds Liquid Reserves, Ltd.	CRP
CitiFunds Premium Liquid Reserves, Ltd.	CRP
CitiFunds Small Cap Growth Portfolio, Ltd.	Series of TPP
CitiSelect Ltd Folio 200	Several series of AAP and TPP
CitiFunds Short-Term U.S. Government Income Portfolio, Ltd.	Series of TPP

Citibank, NA is the investment advisor for each of the Hub funds and is also the sub-administrator for those Hub funds where the investment manager’s contract does not cover administrative services. The custodian and certain other service providers also are present in New York City for each of Petitioner’s Hub funds.

Discussion

Section 208.1 of the Tax Law provides that a “corporation” includes (a) an association within the meaning of 7701(a)(3) of the Internal Revenue Code (including a limited liability company), (b) a joint-stock company or association, (c) a publicly traded partnership treated as a corporation for purposes of the Internal Revenue Code, pursuant to section 7704, thereof and (d) any business conducted by a trustee or trustees wherein interest or ownership is evidenced by certificate or other written instrument.

Section 209.1 of the Tax Law imposes, annually, a franchise tax on every corporation for the privilege of exercising its 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.

However, section 209.2-a of the Tax Law provides that an alien corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in this state, for the purposes of Article 9-A of the Tax Law, if its activities in this state are limited solely to:

- (a) investing or trading in stocks and securities for its own account within the meaning of section 864(b)(2)(A)(ii) of the Internal Revenue Code (“IRC”), or
- (b) investing or trading in commodities for its own account within the meaning of section 864(b)(2)(B)(ii) of the IRC, or
- (c) any combination of activities described in paragraphs (a) and (b) above.

For purposes of section 209.2 of the Tax Law an alien corporation is a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States.

Conclusion

Issue 1: Pursuant to section 209.2-a of the Tax Law, none of the off-shore Spoke funds, listed above, which are alien entities, will be deemed to be doing business, employing capital, owning or leasing property or maintaining an office in New York State by virtue of the fact that the fund is a partner in a Hub fund partnership which is present in New York City, where the Hub fund’s only business activities are investing or trading in stocks or securities for its own account within section 864(b)(2)(A)(ii) of the IRC, or investing or trading in commodities for its own account within the meaning of section 864(b)(2)(B)(ii) of the IRC.

Issue 2: Pursuant to section 209.1 of the Tax Law, none of the off-shore Spoke funds, listed above, will be deemed to be doing business, employing capital, owning or leasing property or maintaining

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an office in New York State by virtue of the fact that a fund holds its board or committee meetings in New York City or that the Hub fund partnership, of which it is a partner, holds board or committee meetings in New York City.

Issue 3: Since the New York State Department of Taxation and Finance does not administer New York City's unincorporated business tax, we cannot opine as to whether investing in property qualifying for the self-trading exemption under New York City's unincorporated business tax is "investing or trading in stocks or securities for its own account" or "investing or trading in commodities for its own account" for purposes of the exclusion provided by section 209.2-a of the Tax Law. However, with respect to what is meant by "trading in stocks or securities" or "trading in commodities" for purposes of the exclusion provided by section 209.2-a of the Tax Law, we would look to sections 864(b)(2)(A)(ii) and 864(b)(2)(B)(ii) of the IRC, respectively, and the regulations promulgated thereunder, such as section 1.864-2(c)(2) of the Treasury Regulations which defines "securities", section 1.864-2(d) which describes a "commodity" and proposed regulation section 1.864(b)-1 of the Treasury Regulations which defines "derivative". If the items qualifying for the self-trading exemption under New York City's unincorporated business tax also qualify under sections 864(b)(2)(A)(ii) or 864(b)(2)(B)(ii) of the IRC and the regulations thereunder, then the exclusion in section 209.2-a of the Tax Law would apply.

DATED: April 3, 2000

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

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