

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

TSB-A-82(7)C  
Corporation Tax  
June 9, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. C810529A

On May 29, 1981, a Petition for Advisory Opinion was received from New York Futures Exchange, Inc. and New York Futures Clearing Corporation, both located at 20 Broad Street, New York, New York 10005.

The issue raised is whether the Petitioners may file a combined franchise tax report for the 1980 taxable year, and for subsequent taxable years as well. Petitioners are corporations subject to tax under Article 9-A of the Tax Law, which imposes the Franchise Tax on Business Corporations.

New York Futures Exchange (hereinafter "NYFE") is a wholly owned subsidiary of the New York Stock Exchange, Inc. It operates a futures exchange where its members trade futures in governmental debt obligations and foreign currencies. NYFE also regulates trading in the market which it provides, supplies market related services for its members and disseminates information concerning trades to the financial community.

New York Futures Clearing Corporation (hereinafter "NYFCC") is a wholly owned subsidiary of NYFE. The sole function of NYFCC is to provide clearing and settlement services for members of NYFE with respect to transactions carried out on NYFE's trading floor.

During the period August 7 through December 31, 1980, the first four months of NYFE/NYFCC operations, NYFCC's receipts totaled \$367,000. Five percent of such receipts were attributable to services performed by NYFCC for NYFE and its members. Ninety-five percent of such receipts were attributable to the investment by NYFCC of a \$5 million capital contribution received from NYFE.

Section 211.4 of the Tax Law, contained in Article 9-A, provides, in pertinent part, that:

"In the discretion of the tax commission, any taxpayer, which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations . . . may be required or permitted to make a report on a combined basis covering any such other corporations . . . ."

The State Tax Commission has exercised the discretionary powers granted under this provision by promulgating regulations establishing the requirements for filing on a combined basis. Thus, section 6-2.2(b) of the Business Corporation Franchise Tax Regulations (20 NYCRR 6-2.2(b)) provides that in determining ownership of capital stock for purposes of section 211.4 of the Tax Law, "the term 'substantially all' means ownership or control of 80 percent or more of the voting stock."

Section 6-2.3(a) of such regulations provides, in part, as follows:

"In deciding whether to permit or require combined reports the following two broad factors must be met:

- 1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
- 2) there are substantial intercorporate transactions among the corporations."

Section 6-2.3(b) of the same regulations provides that the Tax Commission will consider a corporation to be part of a unitary business if it is engaged in the same or related lines of business as the other corporations in the group.

Section 6-2.3(c) of the same regulations provides, in part, that:

"In determining whether the substantial intercorporate transaction requirement is met, the Tax Commission will consider only transactions directly connected with the business conducted by the taxpayer, such as described in paragraph (1), (2) or (3) of subdivision (b) of this Section. Service functions, such as accounting, legal and personnel will not be considered. The substantial intercorporate transaction requirement may be met where as little as 50 percent of a corporation's receipts are from any qualified activities . . . . "

Petitioners meet the requirements of section 6-2.2(b) of the Business Corporation Franchise Tax Regulations inasmuch as NYFE owns 100% of the stock of NYFCC. Petitioners also meet the first requirement set forth in section 6-2.3(a) of such regulations, inasmuch as the two corporations are parts of a unitary business and are engaged in related lines of business. However, Petitioners fail to meet the second requirement contained in section 6-2.3(a) of such regulations, inasmuch as only five per cent of NYFCC's receipts were attributable to intercorporate transactions. With respect to the 1980 taxable year, then, Petitioners do not meet the requirements which the State Tax Commission has established, by virtue of the discretionary authority provided for by section 211.4 of the Tax Law, for filing a combined return. Eligibility for filing on a combined basis for subsequent years can be determined only on the basis of the actual circumstances of the corporations in such subsequent years.

DATED: June 8, 1982

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau