

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

TSB-A-81 (2) I
Income Tax
May 26, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1801210A

On December 8, 1980 a Petition for Advisory Opinion was received from Bache Commodities Management Company, 100 Gold Street, New York, New York 10038.

The issues raised are:

- 1.) Whether the proposed limited partnership as described below will be subject to the Unincorporated Business Income Tax imposed under Article 23 of the Tax Law, and
- 2.) Whether limited partners of the partnership who are not residents of New York will be subject to the Personal Income Tax imposed under Article 22 of the Tax Law with respect to their distributive share of the partnership's gains and losses.

Bache Commodities Management Co., a Delaware corporation, intends to organize the Chancellor Financial Futures Fund Limited Partnership (hereinafter "the Partnership") under the Delaware Limited Partnership Act. The Partnership will be qualified to do business in New York State under Article 8-A (Foreign Limited Partnerships) of the New York Partnership Law. The Partnership's principal office will be at 100 Gold Street, New York., New York 10038. The Partnership will have one general partner, Bache Management, and a number of limited partners. Bach Management will have sole responsibility for managing the Partnership, but will delegate complete trading authority to Waldner Financial Corporation, pursuant to a management contract.

The sole activity of the Partnership will be the purchase and sale for its own account of financial commodity contracts for the purpose of profiting from changes in the prices of such contracts. Some of the Partnership's assets will be committed to a margin account for commodity contracts. The income, if any, of the Partnership will be gains from the purchase and sale of financial commodity contracts and interest on obligations in such margin account. The Partnership will not be engaged in business as a dealer of financial commodity contracts or any other property and will not hold any of its assets for sale to customers in the course of the Partnership's activities.

The General Partner will have sole discretion to allow or not to allow the transfer of limited partnership interests. The Partnership will not be incorporated nor will the General Partner allow any transfer that would cause the partnership to be taxable as a corporation for purposes of the Internal Revenue Code.

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) defines "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...."

However, section 703(d) provides:

"An 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, but this subsection shall not apply if the unincorporated entity is taxable as a corporation for federal income tax purposes."

Section 631(a) of the Tax Law provides:

"The New York taxable income of a nonresident individual shall be his New York adjusted gross income less his New York deduction and New York personal exemptions, as determined under this part."

Section 632(a) provides in part:

"The New York adjusted gross income of a nonresident individual shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources, including:

(A) his distributive share of partnership income, gain, loss and deduction, determined under section six hundred thirty-seven, and

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Section 632(b) and (d) provides:

"(b) Income and deductions from New York sources .--(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

"(A) the ownership of any interest in real or tangible personal property in this state; or

"(B) a business, trade, profession or occupation carried on in this state.

"(2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, 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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(d) Purchase and sale for own account. -- 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."

Accordingly, the Partnership will not be an unincorporated business subject to the Unincorporated Business Income Tax imposed under Article 23 of the Tax Law because the sole activity of the Partnership will be the purchase and sale of financial commodity contracts few its own account and because the Partnership will not be engaged in business as a dealer of financial commodity contracts or any other property and will not hold any of its assets for sale to customers in the course of the Partnership's activities.

Furthermore, a limited partner who is a nonresident of New York will not be subject to the Personal Income Tax imposed under Article 22 of the Tax Law with respect to such partnership income because his distributive share of partnership income will not be attributable to the ownership of any interest in real or tangible personal property in this State or to a business, trade, profession or occupation carried on in this State.

DATED: May 4, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau