

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

TSB-H-80-(242)-I
Income Tax
August 26, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I800403B

On April 3, 1980, a Petition for Advisory Opinion was received from the Industrial Capital Group, 345 Park Avenue, New York, New York 10022.

The issue raised is whether the limited partnership is subject to New York State Unincorporated Business Income Tax.

Industrial Capital Group is a limited partnership. The partnership is organized to acquire capital stock of companies; to finance the acquisition of, and to make investments in, such companies, in return for securities and other business interests of any and all types; to sell, exchange, and otherwise dispose of such investments; to invest the assets of the partnership in various bank accounts or other time or demand deposits, and to purchase or otherwise acquire, hold, sell, transfer, exchange or otherwise dispose of, or realize upon, interest bearing securities and other financial assets; to make and perform all contracts and engage in all activities and transactions necessary or convenient or incidental to the foregoing; and other purposes as are necessary to protect or enhance the assets of the partnership.

All investments are made solely for the benefit of the partnership. The partnership does not engage in the purchase or sale of investments on behalf of customers.

Subsection (a) of section 703 of the Tax Law provides: "General.--An unincorporated business means 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, but not including any entity subject to tax under article nine, nine-a, nine-b, nine-c... of the tax law...."

Section 203.1(b) of the regulations provides: "Ordinarily, the engaging in activities relating to the investment and reinvestment of a taxpayer's own funds and the receipt or collection of income therefrom or the consummation of isolated or incidental transactions connected with such investment activities will not be considered to be the carrying on of a trade, business or occupation. However, a taxpayer who or which invests funds in the purchase of an operating unincorporated business... or other unincorporated activity of the type where the carrying on of business is necessary to realizing on the investment will be deemed to be engaged in the conduct of a taxable trade, business or occupation, even though only a limited amount of time, thought and energy may be devoted to the activity by an individual taxpayer or by the members of a partnership or other unincorporated entity...."

Section 203.12(a) of the regulations provides: "Notwithstanding the provisions of section 203.1 of this Part, an individual or unincorporated entity, other than a dealer holding property primarily for sale to customers in the ordinary course of his or its trade or business, shall not be deemed engaged in an unincorporated business solely by reason of the purchase and sale of property (real or personal) for his or its own account...."

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The Tax Law states than an individual is not subject to the Unincorporated Business Income Tax based on the purchase and sale of property solely for his own account. The partnership cannot in any way perform functions for customers or enter into transactions which invest funds in an unincorporated business or activity.

Accordingly, since all investments are made solely for the benefit of the partnership and the partnership does not engage in the purchase or sale of investments on behalf of customers, the Industrial Capital Group has no liability for the New York State Unincorporated Business Income Tax.

Dated: June 30, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau