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

TSB-M-81 (6)M
Stock Transfer Tax
October, 1981

Subject: United Nations Joint Staff Pension Fund

The following correspondence dated September 3, 1980 establishes the status of the United Nations Joint Pension Fund under the New York State Stock Transfer Tax.

This is in reply to your letter to the prior Counsel to the Department of Taxation and Finance requesting that the Un Joint Pension Staff Fund (hereinafter the "Fund") be rules exempt from the New York stock transfer tax. For the reasons stated below it is my opinion that the Fund as an integral bureau of the UN is entitled to the same stock transfer tax exemption as the UN itself.

The Pension Fund's operations may be divided into two branches: investment and administration. Investment of the Fund's assets is ultimately the responsibility of the Secretary-General, the UN's chief executive officer. Administration is controlled by the Joint Staff Pension Board (hereinafter "the Board" or the Pension Board").

Administration of the Fund is provided for in Part II of the Regulations and Rules of the United Nations Joint Staff Pension Fund (the "Regulations"). Document No. JSPB/G.4/Rev.9, 1 January 1977. (Textile citations to "Articles" refer to this document.) The Regulation of the General Assembly set up a decentralized administration. The Fund is administered primarily by the Board, with assistance from a staff pension committee for the UN and each member organization, and a secretary to the Board and to each pension committee. The Secretary-General names the secretary for both the Pension Board and the UN pension committee. (Article 7 (a)). Article 4(b) empowers the Board to make Administrative Rules to cover details of participation and entrance into the plan, not otherwise prescribed by the Regulations. The Board did promulgate such Rules in 1970, which were attached to the Regulations you forwarded as Annexes I and II.

The six appointees from the United Nations staff pension committee are a minority of the Board, but the largest single bloc. The remaining fifteen members of the Board (15/21 or 718) are from the staff pension committees of the twelve member organizations participating in the Fund. (Article 3(a)). In order to join the Pension Fund, tile specialized agencies must ratify the Fund Regulations. (Article 3(c)). By ratification the specialized agencies surrender nearly all their autonomy in retirement matters because the Regulations and Administrative Rules cover all pension matters. The General Assembly must vote to accept or terminate every special agency membership, (Article 16(a)) as well as vote on any transfer of pension rights, (Article 13). The Regulations even reach into internal operations of the agencies. Every employee of each agency must joint the Fund, (Article 2(a)), and the membership of the agency staff pension committee is broadly prescribed, (Article 6(c) and Section C, Annex II).

The investment of Fund assets is clearly controlled by the UN itself because the final authority for investment decisions is the Secretary-General. (Article 19(a)). He must solicit the observations of the Pension Board but is not bound by them. (Article 20) He must also consult with the Investment Committee, but he appoints the nine members of that committee.

If there are any restrictions on the Secretary-General in his investment discretion, they are imposed by the General Assembly. (See document JSPB/R.600(X-XV), 12 June 1979, Management of the Investments, in which the General Assembly by resolution directed the Secretary to investigate the possibility of investing the Fund's assets in underdeveloped countries)

Other important features of pension administration are controlled by UN officers. Allegations of non-observance of the pension Regulations are tried by the UN Administrative Tribunnal. (Article 49). The Fund is audited by the UN Board of Auditors. (Article 14(b)).

Apart from an analysis of the Pension Fund Regulations, the Appellate Division of the Supreme Court has recently found the Pension Fund to be an organ of the United Nations. In Shamsee v. Shamsee, ---AD 2d---, NYLJ, 6/20/80, op'n of 5/19/80, Mrs. Shamsee sought to enforce her court-awarded support by sequestering her husband's interest in the UN Pension Fund. The Secretary of the Fund set up various treaties and statutes that held him, as a UN official, immune from judicial process.

He declined to honor the sequestration order and the Supreme Court, Special Term, ordered his arrest. On the Fund's appeal from this order Mrs. Shamsee argued that tile Fund was a commercial enterprise distinct from the UN proper and not entitled to treaty in, unities. The Court flatly rejected this conclusion, finding that the Fund is an organ of the UN regulated by the General Assembly; that although the assets are held separately they are the property of the UN; that the UN deposits money into the Fund, and that the Fund's offices are at UN headquarters. The immunity claim was upheld and the order of arrest reversed on the law.

Subdivision 3 of section 270 of the Tax Law, as amended by Chapter 301 of the Laws of 1967, provides:

> "It shall be the duty of the person or persons making or effecutating the sale or transfer, including the person or persons to whom the sale or transfer is made, to pay the tax provided by this article; provided, however, that this subdivision shall not apply to any governmental entity or international organization which is not subject to the tax."

The provisions of subdivision 3 of section 270, which excludes from the tax any sale or transfer wherein the vendor or transferor is a governmental entity or international organization which is not subject to the tax, were added in such subdivision by Chapter 301 of the Laws of 1967.

Originally, such subdivision imposed the duty to pay the tax solely on the person making or effectuating the sale or transfer. Article 19 of the Tax Law which imposed such tax did not contain any language relating to the exemption from tax for a governmental entity or international organization prior to the amendment referred to above. However, the Attorney General held that the State of New York and its political subdivisions were not subject to the tax by statutory construction

(1943 Opns. Atty. Gen. 400); that Federal agencies were exempt on constitutional grounds (1944 Opns. Atty. Gen 345) and that foreign governments were exempt under established principals of international law (1947 Opus. Atty. Gen. 290). Sales or transfers of stock within the State by all other governmental entities were always deemed subject to the tax except international organizations, such as the United Nations, which were exempt by treaty.

The stock transfer tax was imposed only on the vendor or transferor and not on the vendee or transferee. In order to remedy such situation, subdivision 3 of section 270 was amended by Chapter 141 of the Laws of 1945 to include as persons liable for the tax the person or persons to whom the sale or transfer is made. Thus, a like duty to pay the tax was imposed upon the vendee or transferee. Of course, the State of New York, its political subdivisions, the Federal Government and agencies and foreign governments, which were exempt from the tax as transferors were also exempt as transferees.

In construing this amendment, the Attorney General ruled that the person to whom the sale or transfer is made would be liable for the tax even though the sale or transfer was made by the State of New York or its political subdivision, the Federal Governmental or foreign governments. (1946 Opns. Atty. Gen. 321 and 1947 Opns. Atty. Gen. 290) The legislative memorandum accompanying the bill passed in 1967 (1967 New York State Legislative Annual, p. 214, relating to Chapter 301 of the Laws of 1967) pointed out the effect of this result. The memorandum states that "unless these exempt governmental and international organizations agree to pay the tax despite their exemption, they have difficulty in finding buyers because purchasers will buy from other vendors who do pay the tax and thereby save them (the purchasers) from liability for it." (Emphasis supplied) to avoid such a result and to allow a complete exemption from the tax where the vendor was either New York State or a political subdivision thereof, the Federal Governmental, a foreign government or an international organization exempt by treaty, subdivision 3 of section 270 was amended by Chapter 301 of the Laws of 1967 as previously described.

The Governor's Memorandum of April 18, 1967, issued when he signed the act amending such subdivision, uses the words "tax exempt government entities" rather than the words "governmental entities." This use is not merely accidental but points to the type of entity necessary to permit exemption under the law. The key to the meaning of the words "governmental entities" is provided by the 1967 Legislative Memorandum previously cited. The words "exempt governmental and international organizations" stated in such memorandum are clarified by additional language contained therein as follows: "This State and its municipalities are exempt from the stock transfer tax on account of their governmental character, and Federal governments are also exempt on grounds of international comity, and international organizations such as the United Nations are exempt by treaty."

Clearly, the United Nations itself, when the seller of stocks, is exempt from the stock transfer tax. That was one of the express purposes of the amendment of subdivision 3 of section 270 of the Tax Law by Chapter 301 of the Laws of 1967. The administrative power of the Pension Fund flows solely and directly from the General Assembly of the United Nations. By joining the Fund the member agencies are drawn into the jurisdiction of the Board, and thus the General Assembly's ultimate investment authority exercised by the Secretary-General. The Pension Fund is thus an integral part of the UN rather than an independent pension trust with a separate existence. Recent New York judicial authority accords with this view and the result accords with the opinion of Commissioner Tully of December 19, 1979 with respect to the New York City Teacher's Retirement System. That system also by reason of its organization and operation was a government agency of the City of New York and thus exempt from the tax. The Shamsee case indicates that the courts have determined that the Fund is similarly a mere agency of the United Nations. Therefore, the Pension Fund is exempt on its sales of stock from the New York stock transfer tax.

It should be noted that Tax Law § 280 limits refunds, without interest, to claims presented within two years of payment or affixing of stock transfer tax stamps, as the case may be.

Sincerely,

s/Ralph J. Vecchio
Deputy Commissioner and Counsel