

The Commonwealth of Massachusetts

Department of Revenue

Loxwell Saltinshall Building,

100 Cambridge Street, Boston 02204



L. JOYCE HAMPERS
COMMISSIONER

January 7, 1982

("Parent") is a corporation of limited liability organized in the United Kingdom. It contemplates investing in American enterprises through one or more subsidiary corporations organized in the United States and having principal offices in Massachusetts. The Parent intends that the subsidiaries will qualify for taxation under Massachusetts General Laws Chapter 63, Section 38B, which confers tax benefits on certain corporations engaged exclusively in buying, selling, dealing in, or holding "securities" (except securities of a Domestic International Sales Corporation), in their own behalf and not as brokers.

You inquire whether the subsidiaries will be disqualified from treatment as security corporations taxable under Chapter 63, Section 38B, if they invest in limited partnerships organized under the limited partnership laws of one or more states. The subsidiaries will have no responsibility for managing the partnerships in which they invest.

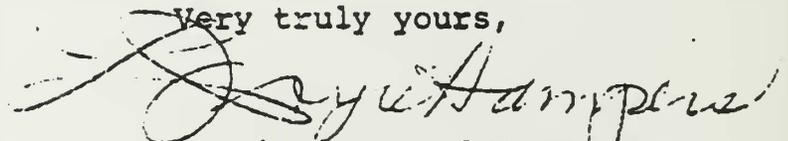
In federal and state statutory schemes for regulation of securities, "security" is commonly defined as including "investment contracts" (see G.L. c. 110A, s. 401(k); Securities Act of 1933, s. 2(1), 15 U.S.C. s. 77b(1) (1971)). The United States

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Supreme Court declared in SEC v. Howey Co., 328 U.S. 293, 298-99 (1946), that an investment contract means "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." Under this formulation and refinements of it, limited partnership interests have generally been held to be "securities." SEC v. Murphy, 626 F.2d 633 (9th Cir. 1980); Pratt v. Kross, 276 Or. 483 (1976); see Long, Partnership, Limited Partnership, and Joint Venture Interests as Securities, 37 Mo. L. Rev. 581 (1972).

Based on the foregoing, it is ruled that the subsidiary corporations will not be disqualified from treatment as security corporations under Chapter 63, Section 38B if they buy, sell, deal in, or hold interests in limited partnerships over which they have no rights of management or control.

Very truly yours,



Commissioner of Revenue

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