

December 3, 2012

To the DC Tax Commission:

Avenir Corporation is a DC based investment management firm. We were founded in 1980 and currently manage approximately \$800 million in assets for high net worth individuals, families and institutions including hospitals, schools, and charitable foundations. We have enjoyed our location here in DC's central business district and consider ourselves good corporate citizens and positive contributors to the DC business community.

Our business as it is presently conducted is known as a separate account business. As the term suggests, each of our clients has their own separate account, unlike a mutual fund or investment partnership in which many investors pool their capital.

We currently offer no such pooled or commingled investment vehicles, but are compelled to do so in order to remain competitive with our peers and competitors worldwide, as well as to meet the evolving needs of individual and institutional investors who are increasingly demanding to place their capital in investment partnerships.

Currently it is estimated that there are over \$2.1 trillion is invested through passive investment partnerships, which are often referred to as hedge funds or alternative investment funds. The alternative investment asset class has matured into a significant component of the investment management industry, and most if not all large institutional investors allocate a significant percentage of their investments to this asset class. For example, as of September 2012, the District of Columbia's Retirement Board had over \$1 billion invested in such alternatives.

However, the District of Columbia's Unincorporated Business Tax makes it economically infeasible to operate and manage a passive investment fund in the District due to the nearly 10% layer of taxation on capital gains and income at the partnership level. Such a tax is not applied to passive investment partnerships domiciled in New York, Virginia or Maryland, or any other state that we are aware of, which is why this vibrant and growing part of the investment management industry simply does not exist in the District. This tax is part of the answer to the question of why is DC the only national capital without a vibrant financial industry. It is also somewhat frustrating to know that firms located outside the District offer these partnerships to their customers in the District, but we cannot since we are headquartered here. Even the District of Columbia offers such investment opportunities to its own retirement plan participants, all of which are managed outside of the District and thus not subject to an Unincorporated Business Tax.

Our understanding of the theory behind the Unincorporated Business Tax is to ensure that a trade or business conducted in the District pays its fair share. We have no argument with this intent and believe that all parties who benefit from District services should pay their fair share. Yet the fact that the Unincorporated Business Tax effectively prevents passive investment partnerships from locating in the District is surely an unintended consequence. The law was passed before the introduction of passive investment partnerships, which typically invest in publically traded securities around the world and have no geographic focus. In addition, the law ignores the fact that the investors in such a partnership would likely be located in jurisdictions throughout the country and, possibly the world. Lastly, it should be

remembered that if a firm such as ours was able to build a new business in the District, then new revenue to the District would follow.

About a decade ago we spent a lot of time looking into this problem and went as far as to suggest legislation that would exempt earnings from passive investment partnerships from the unincorporated business tax which was proposed by Councilman Jack Evans in 2002 in a bill titled "Portfolio Investment Fund Competitiveness Act of 2002". As the proposed legislation was being considered in committee, the District's Deputy Chief Financial Officer, Office of Tax Revenue, suggested that the proposed language was too broad and that a more targeted approach be considered. Specifically, he suggested that the Council could opt to carve out an additional exclusion from the term "unincorporated business" to achieve the goal of the proposed legislation. After that testimony our effort stalled.

Now that that the District has formed a commission to consider its entire tax picture, we respectfully suggest that the District consider exempting earnings from passive investment partnerships from the Unincorporated Business Tax. If properly considered and worded along the lines of other jurisdictions such as New York City, we believe that this change in the District's tax code would result in the formation of new businesses in the District that would in turn create new jobs, diversify the business base and contribute to economic growth. We at Avenir would be the first of many to establish a passive investment partnership in the District.

Before
The Council of the District of Columbia

Taxation of Unincorporated Investment Companies
Comparison of Applicable Tax Provisions In Other Jurisdictions

District of Columbia

The District imposes an income tax at a rate of 9.975% on the income of Unincorporated Business conducting business within the District of Columbia.

Taxable Income of an Unincorporated Business Included dividends, interest and gains and losses from investment property.

Maryland

Maryland imposes no income tax upon Unincorporated Businesses, but requires flow-through entities including Unincorporated Business to withhold and remit Income tax on the portion of its income attributable to non-resident owners at a rate of 4.8% for 2001.

Maryland, however, excludes Investment Partnerships from the withholding requirement.

An Investment Partnership is defined as a pass-through entity whose activities and assets are limited to investments in stocks, bonds, futures, options or debt obligations other than debt instruments directly secured by real or tangible personal property. It is not subject to the withholding tax requirement merely because the investment decisions, trading orders, research and like are conducted by a general partner from a Maryland location.

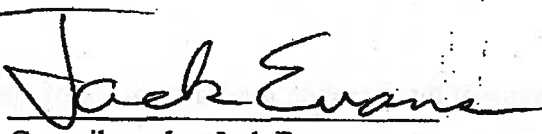
Virginia

Virginia imposes no income tax or income tax return requirement on Unincorporated Businesses. Generally, Virginia does not tax non-residents on Income from Intangible personal property.

New York City

New York City imposes an income tax at a rate 4.0% on the taxable income of Unincorporated Businesses, but provides an EXEMPTION for Investment Activities. For purposes of determining if an unincorporated business is an Investment Activity, at least 90% of its gross assets comprising investment property including investment capital, other stocks and securities, notional principal contracts, derivative financial instruments and other positions in property, excluding property held as a dealer and debt instruments acquired in the ordinary course of a trade or business and certain other property.

(Prepared by David R. Oliver, Jr., CPA, Kaiser, Scherer & Schlegel, PLLC)


Councilmember Jack Evans

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Jack Evans introduced the following bill which was referred to the
Committee on _____

To amend Title 47 of the District of Columbia Official Code to exclude partnerships,
limited partnerships, limited liability companies or other unincorporated entities
which acquire, hold, or dispose of portfolio investment assets or portfolio
investment income from the definition of trades or businesses subject to the tax
imposed by subchapter VIII of Chapter 18 of Title 47; to define portfolio
investment assets and portfolio investment income; and to amend the treatment of
portfolio investment assets and portfolio investment income under the allocation
and apportionment of District and non-District income under § 47-1810.2

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Portfolio Investment Fund Competitiveness Act of
2002".

Sec. 2. Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-1801.04 is amended as follows:

(1) Subsection (6)(A) is amended to read as follows:

"(6)(A) "Trade or business" means the engaging in or
carrying on of any trade, business, profession, vocation or calling, or commercial activity
in the District of Columbia, including activities in the District that benefit an affiliated

entity of the taxpayer, the performance of the functions of a public office and the leasing
of real or personal property in the District of Columbia by any person whether or not the
property is leased directly by such person or through an agent, and whether or not such
person or agent performs any services in connection with the property; provided,
however, that the term "trade or business" shall not include, for the purposes of this
chapter, (i) sales of tangible personal property whereby title to such property passes
within or without the District, by a corporation or unincorporated business which does not
physically have or maintain an office, warehouse, or other place of business in the
District, and which has no officer, agent, or representative having an office or other place
of business in the District, during the taxable year; or (ii) in the case of any partnership,
limited partnership, limited liability company or other unincorporated entity subject to the
tax imposed by subchapter VIII of this chapter, the acquisition, holding or disposition of
Portfolio Investment Assets or the receipt of Portfolio investment income."

(2) A new subsection (37) is added to read as follows:

"(37) "Portfolio investment assets" means common or
preferred stock, notes, bonds, debentures, commodities futures, warrants, put or call
options, shares or units in real estate or other investment trusts, mutual funds, hedge
funds, bank deposits, U.S. Treasury securities, municipal bonds, and other equity or debt
securities of any issuer and investments that are, or are of a kind, commonly traded as
investments on public exchanges."

(3) A new subsection (38) is added to read as follows:

"(38) "Portfolio investment income" means income from
the ownership or disposition of portfolio investment assets and includes, without

limitation, interest, dividends, capital gains and losses and, in the case of any partner or member of a partnership, limited liability company or other unincorporated association, such person's distributive share of the portfolio investment income of such entity." 1
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(b) Section 47-1810.02 is amended to add a new paragraph (c)(6) to read as follows: 4
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"(c)(6) Notwithstanding the preceding paragraphs (2), (3), (4), and (5), solely for the purpose of the tax imposed by subchapter VIII of this chapter, portfolio investment income shall not be allocable to the District in the case of any person subject to such tax if either (i) at least 90% of the assets of such person are portfolio investment assets; or (ii) at least 90% of the gross income of such person is income which is portfolio investment income, income from the provision of investment, portfolio or fund management services, income otherwise exempt from such tax, or any combination of the foregoing." 6
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Sec. 3. Inclusion in a budget and financial plan. 14

This act shall take effect subject to the inclusion of its fiscal effect in an approved budget and financial plan. 15
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Sec. 4. Fiscal impact. 17

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)). 18
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Sec. 5. Effective date. 22

This act shall take effect following approval by the Mayor (or in the event of veto 23

by the Mayor, action by the Council to override the veto), a 30-day period of 1
Congressional review as provided in section 602(c)(1) of the District of Columbia Home 2
Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1- 3
206.02(c)(1)), and publication in the District of Columbia Register. 4