

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

TSB-A-82 (9) I
Income Tax
November 3, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I810803C

On August 31, 1981 a Petition for Advisory Opinion was received from Henry and Lois Schwaeber, 190 Harbor Lane, Roslyn Harbor, New York 11576.

The issue raised is the role of a net operating loss in computing the New York minimum income tax of a resident individual, where such individual has an item of tax preferences for capital gains.

Section 601-A of the Tax Law imposes the State minimum income tax, at the rate prescribed in section 602(f), on the New York minimum taxable income of every individual, estate or trust. Section 602(f) provides for a minimum income tax rate of 6%, applicable to taxable years commencing after December 31, 1971. Section 622 provides that the New York minimum taxable income of a resident individual "shall be the sum of the items of tax preference," subject to three reductions. These reductions are (a) a "specific deduction," specified as a dollar amount in section 622(c), (b) State personal income tax after credits, and (c) to the extent that the sum of the items of tax preference exceeds the sum of (a) and (b), "the amount of any net operating loss of the taxpayer, as determined for federal income tax purposes, which remains as a net operating loss carryover to a succeeding taxable year." Tax Law, §622(a)(3). The expression "items of tax preference" is defined in section 622(b) as "The federal items of tax preference, as defined in the laws of the United States," with certain modifications not applicable herein. The applicable provision of Federal statutory law is section 57 of the Internal Revenue Code. 20 NYCRR 123.1(b)(1).

In 1980 Petitioners had a tax preference item for capital gains and a net operating loss. Petitioners contend that their item of tax preference for capital gains is in effect taxed twice, "once under Part I of Form IT-220 and a second time by reducing the 1980 Federal income necessary to arrive at the carryforward." Form IT-220 is the minimum income tax computation schedule. Part I provides for an enumeration and summing of items of tax preference. Petitioners' item of tax preference for capital gains is properly includable in Part I. Part II provides for certain modifications to Federal items of tax preference not germane to the present discussion. Part III provides for the actual computation of minimum income tax. The total of items of tax preference is to be entered on line 1, while lines 2, 4 and 6 provide for the three reductions described earlier. Line 6 calls for the "net operating loss carryover reduction." The amount to be entered here is not, as Petitioners appears erroneously to understand it, Petitioners' net

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operating loss reduced by their item of tax preference for capital gains, but rather their entire 1980 net operating loss available as a net operating loss carryover to a succeeding taxable year. There is, thus, no improper double taxation.

DATED: October 22, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau