

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

TSB-A-88 (13) I
Income Tax
July 12, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1840508B

On May 8, 1984, a Petition for Advisory Opinion was received from Jean Koenigsreuter, Box 770Q, Route 1, Summerfield, Florida 32691.

The issues raised are (1) whether upon the death of a nonresident, the spouse and sole beneficiary of the deceased nonresident is entitled to a stepped-up basis for an installment sale thereby eliminating any future taxable gain for purposes of the personal income tax imposed under Article 22 of the Tax Law and (2) whether interest paid to a nonresident on an installment sale is taxable for purposes of the personal income tax imposed under Article 22 of the Tax Law.

Otto Koenigsreuter (hereinafter the "Decedent") was a resident of New York State. The Decedent terminated his New York State residence on April 5, 1981. Prior to that date, the decedent sold his farm located in New York State in an installment sale. The Decedent filed a resident return (form IT-201) and a nonresident return (form IT-203) for the tax year ending December 31, 1981. He reported the gain on the sale of the property and the installment payments received but did not report any interest paid to him with respect to the installment sale subsequent to his change of resident status. The Decedent entered into an agreement with the New York State Department of Taxation and Finance pursuant to section 654(c)(4) of the Tax Law and deposited suitable securities with the Department in order to avoid the special accrual requirement of section 654(c)(1) of the Tax Law. Jean Koenigsreuter (hereinafter the "Petitioner"), the Decedent's spouse, filed joint returns with the Decedent for the 1981 tax year and signed such returns. Additionally, the Petitioner was a party to and signed the agreement entered into by the Decedent with the Department of Taxation and Finance pursuant to section 654(c)(4) of the Tax Law. The Decedent filed nonresident returns (form IT-203) for the 1982 and 1983 tax year including in such returns gain from each installment payment paid in those years but not including interest paid with respect to such installment payments. The Decedent died a resident of the State of Florida on December 5, 1983.

Section 654(c) of the Tax Law provides in part:

(c) Special accruals. (1) If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for New York income tax purposes for such portion of the taxable year or for a prior tax year. . . .

* * *

(4) The accruals under this subsection shall not be required if the individual files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the inclusion of amounts accruable under this subsection in New York adjusted gross income for one or more subsequent taxable years as if the individual had not changed his resident status.

Section 651(b) of the Tax Law provides that if a husband and wife file a joint New York income tax return their tax liabilities shall be joint and several (with exceptions not here relevant).

The agreement signed by the Decedent and the Petitioner provides:

* * *

Whereas, I elect, pursuant to Section 654(c)(1) of the Tax Law, to file my New York personal income tax return for the period prior to my change of residence on the cash receipt basis. . .

Now, therefore, I agree that: (1) I will include in my New York personal income tax returns in subsequent taxable years (or periods) all income and gain accrued prior to my change of residence as if I had not changed my resident status and will pay the tax thereon when due; and (2) if the State Tax Commission determines that I have failed to include in my New York personal income tax return for any taxable year (or period) any item of income or gain which is required to be included therein or to pay any tax required to be paid, under the terms of this Agreement, the full amount of tax which would have been due, if the election under section 654(c)(4) of the Tax Law had not been made, shall become due immediately. . . .

Section 148.10(a) of the personal income tax regulations provides, in part:

. . . in computing New York taxable income, New York personal service taxable income and New York State minimum taxable income for the resident period, such individual or trust must include all items required to be included if a federal income tax return were being filed for the same period on the accrual basis. . . .

Pursuant to this provision, a taxpayer who changes status from resident to nonresident is required to include in the resident portion of his or her year any income which has accrued before the date of the taxpayer's change of residence. Income to be accrued to the resident period is determined by recomputing the taxpayer's income as if such taxpayer were an accrual basis taxpayer. This is done regardless of the accounting method ordinarily employed by the taxpayer.

Issue (1)

Accordingly, the gain from the installment sale was properly included in the Decedent's and Petitioner's resident portion of their tax year. Since Petitioner filed a joint return with Decedent

TSB-A-88 (13) I
Income Tax
July 12, 1985

for such tax year and was a party to the agreement entered into pursuant to the provisions of section 654(c)(4) of the Tax Law, Petitioner remains liable for the entire amount of personal income tax outstanding under the terms of the agreement. If Petitioner fails to comply with the provisions of such agreement, the full amount of the tax "shall become due immediately." Since Petitioner was personally liable for the tax due as a result of signing the joint return and the agreement under section 654(c)(4), she will receive no step-up in basis so as to cancel any further taxable gain on the installment sale.

Issue (2)

Interest earned pursuant to an installment sale by an individual while a nonresident of New York is not subject to personal income tax pursuant to section 632(b) unless "such income is from property employed in a business, trade, profession, or occupation carried on in this state." Matter of Delmhorst v. State Tax Commission, (92 AD2d 981, affd. 60 NY2d 62:); Matter of Katz v. Tax Commission, (_____ AD2d _____, April 25, 1985). Interest received pursuant to an installment sale by an individual who changed status from resident to nonresident is subject to tax but only to the extent that any amount of interest earned on the installment sale is required to be accrued to such individual's resident period pursuant to the provisions of section 654(c)(1) of the Tax Law and regulation section 148.10(a). The Petition for Advisory Opinion contains insufficient information to determine whether any portion of the interest paid should be so accrued.

Accordingly, the interest paid on the installment sale is not subject to tax except to the extent that any portion of such interest paid must be accrued to the taxpayer's resident period.

DATED: July 12, 1985

s/ANDREW F. MARCHESE
Chief of Advisory Opinions

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth herein.