

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

TSB-A-94 (8) I  
Income Tax  
July 5, 1994

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I940419A

On April 19, 1994, a Petition for Advisory Opinion was received from Patricia Bytner, 44 Nardin, Depew, New York 14043.

The issue raised by Petitioner, Patricia Bytner, is how to treat, for personal income tax purposes under Article 22 of the Tax Law disability income received and taxed in 1992 but paid back in 1993 as "claim of right income".

Petitioner received and paid Federal and New York State personal income tax on disability income in 1992. It was determined on February 5, 1993 by an Administrative Law Judge for the Social Security Administration of the Department of Health and Human Services that Petitioner was totally and permanently disabled commencing on July 24, 1991. Petitioner was awarded social security disability benefits back dated to July 24, 1991. Petitioner had to pay back \$6,400, which was most of the taxable disability income she received and paid taxes on in 1992.

Section 1341 of the Internal Revenue Code ("IRC") provides relief for "claim of right" income required to be paid back during the taxable year. Under the provisions of section 1341 of the IRC, a taxpayer's Federal income tax liability is required to be computed using one of two separate methods. The first method allows a deduction in the year of repayment (section 1341(a)(4) of the IRC); while the second method computes the tax liability without such deduction and subtracts therefrom the decrease in tax from the prior year which would result solely from the exclusion of such disputed income from gross income for such prior taxable year (section 1341(a)(5) of the IRC), whichever method results in the lowest tax.

If a taxpayer deducts the repayment in the year paid as an itemized deduction for Federal income tax purposes, the taxpayer would automatically receive the deduction as a New York State itemized deduction under section 615 of the Tax Law. If the taxpayer claims a credit on the taxpayer's Federal return based on a decrease in tax for the prior year, such credit is not allowable on the taxpayer's New York State personal income tax return because Article 22 of the Tax Law does not contain a similar credit provision.

However, the special credit provision contained in section 1341(a)(5) of the IRC does not alter the fact that a deduction would have been allowable under the other applicable provisions of the IRC (Matter of Anthony Pope, Dec St Tax Commn, December 12, 1980, TSB-H-80(515)I). A deduction for the repayment of amounts previously reported as income under a "claim of right" is allowable as a deduction only in the year of repayment (U.S. v Lewis, 340 US 590; Healy v Commissioner, 345 US 278). Therefore, for New York State personal income tax purposes an itemized deduction would be allowed in the year of repayment of "claim of right" income as if the taxpayer had claimed such deduction as an itemized deduction on the taxpayer's Federal income tax return.

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Herein, Petitioner did not itemize her deductions for Federal income tax purposes, so the lowest tax for Federal income tax purposes resulted by claiming a tax credit pursuant to section 1341(a)(5) of the IRC.

Section 615 of the Tax Law states that "[i]f federal taxable income of a resident individual is determined by itemizing deductions from his federal adjusted gross income, he may elect to deduct his New York itemized deduction in lieu of his New York standard deduction. The New York itemized deduction of a resident individual means the total amount of his deductions from federal adjusted gross income, other than federal deductions for personal exemptions, as provided in the laws of the United States for the taxable year, with the modifications specified in this section .... "

Accordingly, for purposes of computing the New York itemized deduction under section 615 of the Tax Law, Petitioner is allowed to include, as a federal itemized deduction, the amount of the repayment of amounts previously reported as income under a "claim of right". However, pursuant to section 615 of the Tax Law, if Petitioner does not itemize deductions for Federal income tax purposes, Petitioner may not itemize deductions for New York State personal income tax purposes. Where Petitioner takes the standard deduction under section 614 of the Tax Law, no deduction is allowed for the amount of the repayment of amounts previously reported as income under a "claim of right".

DATED: July 5, 1994

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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