

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

TSB-H-81-(4)-I
Income Tax
March 6, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I800916A

On September 16, 1980, a Petition for Advisory Opinion was received from Roger C. Avery and Ann Z. Avery, 65 Sunset West Circle, Ithaca, New York 14850.

The issue raised is whether a resident beneficiary's share of income taxes paid by a nonresident trust (of which he is a beneficiary) to another state must be added to such beneficiary's Federal adjusted gross income in arriving at his New York adjusted gross income under the Personal Income Tax imposed under Article 22 of the Tax Law.

Mr. Avery is a beneficiary of a nonresident simple trust. The trust is required to distribute all income to its beneficiaries but allocates capital gains to corpus. The trust paid income tax on capital gains to the State of Massachusetts in 1977, 1978, and 1979. Mr. Avery has received revised Federal Schedule K-1 forms for 1977, 1978 and 1979 reflecting his share of such Massachusetts income taxes paid by the trust.

For purposes of Article 22 of the Tax Law, the New York taxable income of a resident individual is equal to his New York adjusted gross income less his New York deduction and New York personal exemptions. Tax Law, §611. The New York adjusted gross income of a resident individual is equal to his Federal adjusted gross income with specified modifications. Tax Law, §612. One of these modifications is the taxpayer's share, as beneficiary of a trust, of the New York fiduciary adjustment determined under section 619 of the Tax Law. Tax Law, §612(d). Section 619(a) provides, in relevant part, that "An adjustment shall be made in determining...New York adjusted gross income of a resident beneficiary of any...trust under subsection (d) of section six hundred twelve, in the amount of...[his] share...in the New York fiduciary adjustment as determined in this section." Subsection (b) of section 619 defines New York fiduciary adjustment as the net amount of certain modifications described in specified provisions of Article 22. The theory behind this requirement is that a trust acts as a mere conduit of income, gain, loss, deduction (and modifications required under Article 22 of the Tax Law) to a beneficiary such that the beneficiary's share of each of such items retains its character in the hands of such beneficiary. One of these required modifications is that described in section 615(c)(1) of the Tax Law, which requires an addition in the amount of federally deductible "income taxes imposed by this State or any other taxing jurisdiction..." with an exception not applicable herein. A resident beneficiary's share of such fiduciary adjustment is stated to be an amount "...in proportion to...[his share] of federal distributable net income of the...trust." Tax Law, §619(c). The fiduciary adjustment and the resident beneficiary's share thereof may be computed on Schedule 5 of Form IT-205.

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR

TSB-H-81-(4)-I
Income Tax
March 6, 1981

In the present instance, Petitioner's share of the Massachusetts capital gains taxes paid by the trust constitutes federally deductible income taxes imposed by "another jurisdiction" and hence would be includible in the Petitioner's share of the applicable fiduciary adjustment. Assuming that to represent the only item so includible in Petitioner's share of the applicable fiduciary adjustment, Petitioner is required to add such amount to his Federal adjusted gross income in computing his New York adjusted gross income.

DATED: February 17, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau