

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

TSB-H-81-(58)-I
Income Tax
April 24, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I801117A

On November 17, 1980 a Petition for Advisory Opinion was received from William Zlot, 110 Bleecker Street, New York, N.Y. 10012.

The issue raised by Petitioner is the proper treatment of an accumulation distribution from a trust to a nonresident individual, where such distribution consists entirely of interest on bank accounts, for purposes of the State Personal Income Tax imposed under Article 22 of the Tax Law and applicable New York City personal income taxes.

Section 632(a) of the Tax Law provides that the New York adjusted gross income of a nonresident individual, the starting point in computing his New York Taxable Income, if any, shall be the net amount of items of income, gain, loss, and deduction entering into his federal adjusted gross income which are derived from or connected with New York sources.

Section 632(b)(2) provides that income from intangible personal property, including interest income, "shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this state."

Accordingly, since the accumulation distribution in question consists entirely of interest on bank accounts and not from property employed in a business, trade, or profession it would not be included in the New York adjusted gross income of a State nonresident individual for purposes of the Personal Income Tax.

The New York City City Personal Income Tax imposed under Title T of the Administrative Code of the City of New York is imposed on the city taxable income of residents of New York City only, and therefore would in no event be applicable to the nonresident recipient of the trust distribution at issue. The New York City Earnings Tax on Nonresidents, imposed under Title U of the Administrative Code of the City of New York, is imposed on wages and net earnings from self-employment. Adm. Code of the City of New York, §U46-2.0. These terms are defined by cross-reference to sections 3401(a) and 1402(a) of the Internal Revenue Code, respectively. As there defined, "wages" means "remuneration...for services performed by an employee for his employer..." and "net earnings from self-employment" means "the gross income derived by an individual from any trade or business carried on by such individual," with certain deductions, plus certain income or loss "from any trade or business carried on by a partnership of which he is a member." Accordingly, inasmuch as the accumulation distribution described above does not fit within the categories of "wages" or "net earnings from self-employment," it would not be subject to the New York City Earnings Tax on Nonresidents.

DATED: April 7, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

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