

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(7)I
Income Tax
September 7, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I100527A

On May 27, 2010, a Petition for Advisory Opinion was received from [REDACTED]. The Petition asks whether a citizen of a foreign country who files as a nonresident alien¹ for Federal income tax purposes for taxable year 2011, but is a statutory resident of New York State and New York City, is subject to 2011 New York State and City personal income tax only on those items of income includable in his Federal adjusted gross income, i.e., line 35 of his 2011 Federal Form 1040NR.

We conclude that Petitioner's New York adjusted gross income subject to New York State and New York City personal income tax for taxable year 2011 will only include those items of income includable in determining his Federal adjusted gross income for tax year 2011.

Facts

Petitioner is a citizen of the United Kingdom and maintains a permanent place of abode in New York City. In connection with Petitioner's appearance in a New York City theatrical performance during taxable year 2011, Petitioner anticipates being present in New York City for more than 183 days during taxable year 2011.

Analysis

Under Tax Law §612(a), the New York adjusted gross income of a resident individual means his or her Federal adjusted gross income as defined under the laws of the United States for the taxable year, with certain modifications. For taxable year 2011, it is contemplated that Petitioner will be a New York State and City statutory resident individual as defined in Tax Law §605(b)(1)(B) and §1305(a)(2).

Federal tax law distinguishes between resident aliens and nonresident aliens. Categories established for immigration purposes do not necessarily coincide with those established for tax purposes. The classification between resident and nonresident alien is significant, since a resident alien is taxed like U.S. citizens on worldwide income, and a nonresident alien is taxed only on income from U.S. sources, using special tax withholding, reporting and filing rules.

It is assumed for purposes of this Opinion that Petitioner is entitled to file as a nonresident alien for Federal tax purposes for taxable year 2011 although we express no opinion on the correctness of this classification.

Pursuant to Internal Revenue Code §871(b), a nonresident alien individual engaged in a trade or business shall be taxable as provided in section 1 or 55 on his or her taxable income which is effectively connected with the conduct of a trade or business within the United States. Furthermore, in determining

¹ For purposes of this Opinion the Department relies upon the facts contained within Petitioner's request. The Department does not make a determination as to the appropriateness of Petitioner's federal income tax filing status for taxable year 2011.

taxable income, gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

In the present case, for taxable year 2011, Petitioner will file as a nonresident alien for Federal tax purposes and will receive taxable income effectively connected with his conduct of a trade or business within the United States. Accordingly, Petitioner will be required to file a 2011 Form 1040NR. Furthermore, for taxable year 2011, Petitioner is a New York State and New York City statutory resident and will be required to file a 2011 New York personal income tax return Form IT-201 as a New York City statutory resident. Accordingly, Petitioner's 2011 New York adjusted gross income as a resident individual will be his 2011 Federal adjusted gross income from his 2011 Federal Form 1040NR, with any modifications under Article 22 of the Tax Law that may apply.

DATED: September 7, 2010

/S/

DANIEL SMIRLOCK
Deputy Commissioner and Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.