New York State Department of Taxation and Finance
Office of Counsel

TSB-A-17(2)I
Income Tax
March 1, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. I140306A

A Petition for Advisory Opinion was received from [redacted]. Petitioner asks whether for New York State income tax purposes his basis in out-of-state municipal bonds would include the premiums he paid at the bond acquisition.

We conclude that for New York State income tax purposes a bond holder determines the basis in a bond pursuant to federal law and regulations. There is no Tax Law provision allowing a taxpayer to increase his basis in the bonds for New York purposes beyond his federal adjusted basis.

Facts

Petitioner purchased at a premium municipal bonds issued by a state other than New York State. Petitioner does not buy or sell municipal bonds in a trade or business. Because the bonds yielded tax exempt interest for federal income tax purposes, Petitioner was required to amortize the premium. Petitioner was required to reduce the basis in the bonds by the amortization amount for the year.

For New York State personal income tax purposes, Petitioner was required to add to his federal adjusted gross income ("AGI") the interest income he received each year that was attributable to the municipal bonds. Petitioner claimed the itemized deduction for federal income tax purposes and the standard deduction for New York personal income tax purposes.

Opinion

Pursuant to § 1012 of the Internal Revenue Code ("IRC"), when a premium is paid to buy a bond, the premium is part of the basis of the bond. If the bond yields taxable interest, IRC § 171(a)(1) allows a taxpayer a deduction for the amortizable bond premium for the taxable year. IRC § 171(e) provides that the amount of the bond premium is allocated among the interest payments on the bond and, in lieu of a deduction, the amount of the premium allocated to any interest payment is allowed as an offset to the taxable interest payments. This reduces the amount of interest income otherwise includible in federal gross income. When a taxpayer amortizes the bond premium over the life of the bond, the basis of the bond is correspondingly reduced by the amount of the amortized bond premium pursuant to IRC § 1016(a)(5). If the bond yields tax exempt interest, a taxpayer must amortize the premium. However, IRC § 171(a)(2) provides that this amortized amount is not allowed as a deduction in determining taxable income for the taxable year. Furthermore, each year the basis in the bond must be reduced by the amortization amount for the year.

Since Petitioner did not elect to itemize his New York deductions, no deduction is allowed for the amount of premium required to be amortized for the year. (26 CFR §§ 1.171-2(b), 1.1016-5(b)). There are no Tax Law provisions allowing a taxpayer to increase its basis above its federal amount even though the taxpayer did not claim a deduction for the amortized premium. In the absence of such statutory authority, Petitioner cannot increase for New York purposes his basis in the non-New York tax-exempt bonds beyond his federal adjusted basis.

DATED: March 1, 2016

/S/
DEBORAH R. LIEBMAN
Deputy 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.