

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

TSB-A-81 (4) I
Income Tax
July 15, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. Z810608C

On June 8, 1981, a Petition for Advisory Opinion was received from Intrepid Museum Foundation, 299 Park Avenue, New York, New York 10017.

THE ISSUES

The issues raised are:

1) whether interest paid by Petitioner to holders of bonds issued by Petitioner, under the circumstances described below, will be includible in New York adjusted gross income or New York taxable income of either resident individuals or nonresident individuals under Article 22 of the Tax Law, if such interest is excludable from the federal gross income of such individuals;

2) whether such interest will be includible in New York City city adjusted gross income or New York City city taxable income of city resident individuals under Title T of the Administrative Code of the City of New York, if such interest is excludable from the federal gross income of such individuals; and

3) whether such interest will be includible in the unincorporated business gross income or unincorporated business taxable income of unincorporated businesses under Article 23 of the Tax Law, if such interest is excludable from the federal gross income of such businesses.

THE FACTS

The Intrepid Museum Foundation (hereinafter the "Foundation") will be a nonprofit education corporation chartered by the New York Board of Regents pursuant to the New York Education Law. In the near future, the Foundation will issue Intrepid Museum Foundation Gross Revenue Bonds (hereinafter the "Bonds"). The Bonds will be used to finance the costs of establishing the obsolete aircraft carrier U.S.S. Intrepid as an air, naval and space museum on the Hudson River in New York City.

The Bonds will not be obligations of any of the other forty-nine states or of a political subdivision of any such other state nor will they be obligations or securities of any authority, commission or instrumentality of the United States.

On April 9, 1981, the Foundation submitted to the Internal Revenue Service a request for rulings that the Bonds will be considered to be issued "on behalf of" the City of New York within the meaning of section 1.103-1(b) of the Treasury Regulations and Revenue Ruling 63-20, 1963-1 CB 24; that the Bonds will not be industrial development bonds within the meaning of section 103(b)(2) of the Internal Revenue Code; and that the interest to be paid by the Foundation on the Bonds will be excludable from the federal gross income of the recipients thereof under section 103 of the Internal Revenue Code. As of this writing, no ruling has yet been issued by the Internal Revenue Service with respect to such request.

THE LAW

Section 611(a) of the Tax Law provides:

"The New York taxable income of a resident individual shall be his New York adjusted gross income less his New York deduction and New York personal exemptions, as determined under this part."

Section 612(a) of the Tax Law provides:

"The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section."

No modification specified in Section 612 of the Tax Law requires the inclusion of interest on the Bonds in New York adjusted gross income.

Section 631(a) of the Tax Law provides:

"The New York taxable income of a nonresident individual shall be his New York adjusted gross income less his New York deductions and New York personal exemptions, as determined under this part."

Section 632(a) of the Tax Law provides:

"The New York adjusted gross income of a nonresident individual shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources, including...

(2) The portion of the modifications described in subsections (b) and (c) of section six hundred twelve which relate to income derived from New York sources (including any modifications attributable to him as a partner).

(3) The modification described in paragraph fourteen of subsection (b) of section six hundred twelve."

Section T46-111.0(a) of the Administrative Code of the City of New York provides:

"The city taxable income of a city resident individual shall be his city adjusted gross income less his city deduction and city personal exemptions, as determined under this part."

Section T46-112.0(a) of the Administrative Code of the City of New York provides:

"The city adjusted gross income of a city resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year; with modifications specified in this section."

No modification specified in Section T46-112.0 of the Administrative Code of the City of New York requires the inclusion of interest on the Bonds in New York City city adjusted gross income.

Section 704 of the Tax Law provides:

"The unincorporated business taxable income of an unincorporated business shall be the excess of its unincorporated business gross income over its unincorporated business deductions, allocated to New York "

Section 705(a) of the Tax Law provides:

"Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business, with the modifications specified in this section."

No modification specified in section 705 of the Tax Law requires the inclusion of interest on the Bonds in unincorporated business gross income.

Section 62 of the Internal Revenue Code provides that federal "adjusted gross income" means federal "gross income" minus certain deductions not here relevant.

THE OPINION

Accordingly, Petitioner is advised that if the interest paid by Petitioner to holders of the Bonds is held by the Internal Revenue Service to be excludable from the federal gross income (and hence from federal adjusted gross income) of such holders of the Bonds,

1) such interest shall also be excludable from New York adjusted gross income and New York taxable income of resident and nonresident individuals under Article 22 of the Tax Law;

2) such interest shall also be excludable from New York City city adjusted gross income and New York City city taxable income of city resident individuals under Title T of the Administrative Code of the City of New York; and

3) such interest shall also be excludable from unincorporated business gross income and unincorporated business taxable income of unincorporated businesses under Article 23 of the Tax Law.

DATED: June 18, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau