

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

TSB-A-83 (1) I
Income Tax
February 4, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1821221B

On December 21, 1982 a Petition for Advisory Opinion was received from Samuel Frank, 63-64 77th Place, Middle Village, New York 11379.

The issue raised is the proper method of apportionment and allocation of the income of a nonresident employee who performs services both within and without New York State during each of a number of days, for purposes of the Personal Income Tax imposed under Article 22 of the Tax Law.

The New York adjusted gross income of a nonresident individual, the starting point in determining his or her tax due under Article 22 of the Tax Law, includes the net amount of items of income, gain, loss and deduction entering into federal adjusted gross income which are "derived from or connected with New York sources." Tax Law §632(a).

Section 632(c) of the Tax Law provides that:

"If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under regulations of the tax commission, the items of income, gain, loss and deduction derived from or connected with New York sources shall be determined by apportionment and allocation under such regulations."

The Regulations issued in accordance with the foregoing provide, in relevant part, that:

"The New York adjusted gross income of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into his Federal adjusted gross income, but only if, and to the extent that, his services were rendered within New York State Where the personal services are performed within and without New York State, the portion of the compensation attributable to the services performed within New York State must be determined in accordance with sections 131.16 through 131.18 of this Part." 20 NYCRR 131.4(b).

Section 131.17(a) of the Regulations provides that:

"If a nonresident employee performs services for his employer both within and without New York State, his income derived from New York State sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within New York State bears to the total number of working days employed both within and without New York State " 20 NYCRR 131.17(a).

Section 131.22 of the Regulations provides that:

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"Section 131.14 through 131.21 are designed to apportion and allocate to New York State, in a fair and equitable manner, a nonresident's items of income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without New York State . A nonresident individual may submit an alternative method of apportionment and allocation with respect to items of income, gain, loss and deduction attributable to a business, trade, profession or occupation carried on partly within and partly without New York State. The proposed method must be fully explained in the taxpayer's New York State nonresident personal income tax return."

Accordingly, a nonresident employee who derives income from work performed within and without New York during each of a number of days and who wishes to apportion and allocate such income on the basis of hours or fractions of a day, rather than in days, worked within and without the State, may do so. A full explanation of such method as employed by such taxpayer must be attached to the taxpayer's tax return.

DATED: January 28, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau