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

TSB-A-85 (4) I
Income Tax
June 6, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. I841206A

On December 6, 1984, a Petition for Advisory Opinion was received from Larry Shrank, 1 Skytop Road, Edison, New Jersey 08820.

Petitioner raises the issue of whether a nonresident taxpayer is entitled to make an adjustment for payment of alimony in his New York State Personal Income Tax Return.

Petitioner is an accountant who provides tax assistance to a client who lives in New Jersey and works exclusively in New York. Ail of Petitioner's client's income is derived from New York State sources. On or about January 1, 1983, Petitioner's client was divorced. His client's ex-wife both lives and works in New York State and includes the amount of alimony payments in her income. Petitioner's client has not previously made an adjustment to income for alimony for purposes of New York State income tax.

Section 632 of the Tax Law defines New York adjusted gross income for nonresidents as follows:

> "(a) General - 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 . .
>
> * * *
>
> (b) Income and deductions from New York sources.
>
> (1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:
>
> * * *
>
> (B) a business, trade, profession or occupation carried on in this State."

In applying this section, the Department has disallowed alimony adjustments for nonresidents because the language of the statute requires deductions to be derived from New York sources. Alimony does not relate to the production of New York income.

A recent decision by the New York Court of Appeals, however, has altered the Department's policy with respect to alimony adjustments for nonresident taxpayers. In Friedsam v. New York State Tax Commission, 470 NYS 2d 848, the Court of Appeals held that New York State must allow nonresidents an alimony deduction as an adjustment to income in the same manner that it was previously allowed as an itemized deduction under Section 635(c). The reasoning behind this decision is based on the differential effect the Federal Tax Reform Act of 1976 had on deductions permitted by New York residents and nonresidents. Under the Federal Tax Reform Act of 1976, the status of alimony payments was charged from an itemized deduction to an adjustment to income so as to benefit both taxpayers who take standard deductions and those who itemized their deductions. New York residents benefited from this charge insofar as payment of New York State taxes were concerned since the starting point for computing New York adjusted gross income under s 612(a) is federal adjusted gross income which already incorporates the alimony deduction. Nonresidents, on the other hand, were not afforded the same benefit since § 632(b)(1)(B) places New York source restrictions on deductions in computing adjusted gross income and § 635(c) only allows alimony as an itemized deduction. To equalize this disparity, the Court of Appeals declared that nonresidents be given an alimony adjustment the same as New York residents.

In the aftermath of the Friedsam decision, the Department has developed a method for computing the alimony adjustment for nonresidents. The computation allows nonresidents an adjustment to income for alimony paid based on the ratio of total New York income from New York sources, excluding alimony paid, to total New York income from all sources, excluding alimony paid. (TSB-M-85-(7)-I) Once the ratio is calculated, the alimony payment is multiplied by the ratio to determine the amount of the deduction. In the case at hand, Petitioner's client would be entitled to a deduction based on the above formula. Moreover, to the extent the client's income from all sources in equivalent to that derived from New York sources. Petitioner's client would be entitled to deduct the full amount of alimony paid.

DATED: May 17, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth herein.