

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

TSB-A-87 (2) I
Income Tax
April 29, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1870303C

On March 3, 1987, a Petition for Advisory Opinion was received from Richard Berman, CPA, 860 Longview Avenue Valley Stream, New York 11581.

The issue raised is the availability, for purposes of the personal income tax imposed under Article 22 of the Tax Law, of the standard deduction and "married filing jointly" filing status to Japanese treaty traders in the taxable year during which such traders change their status from nonresident alien to resident alien or from resident alien to nonresident alien.

Petitioner prepares various New York State tax returns for Japanese treaty traders and questions the New York State treatment of such traders in the year of arrival in or departure from New York State in light of the federal treatment whereby the federal standard deduction is not allowed and married treaty traders are required to use the federal tax table for "married filing separately."

ISSUE (I)

Section 611 of the Tax Law provides that the "New York taxable income of a New York resident shall be his New York adjusted gross income less his New York deduction" Section 613 of the Tax Law provides that the "New York deduction of a resident individual shall be his New York standard deduction unless he elects to deduct his New York itemized deduction" Section 614 of the Tax Law sets forth the manner of computing the New York standard deduction of a resident individual.

Section 631 of the Tax Law provides that the "New York taxable income of a nonresident individual shall be his New York adjusted gross income less his New York deduction" Section 633 of the Tax Law provides that the "New York deduction of a nonresident individual shall be his New York standard deduction unless he elects to deduct his New York itemized deduction" Section 634 of the Tax Law sets forth the manner of computing the New York standard deduction of a nonresident individual.

Section 654(a) of the Tax Law provides that when "an individual changes his status during his taxable year from resident to nonresident, or from nonresident to resident, he shall file one return as a resident for the portion of the year during which he is a resident, and one return as a nonresident for the portion of the year during which he is a nonresident"

Section 654(f) of the Tax Law provides that "[w]here two returns are required under this section, the New York standard deduction allowable on each return shall be the amount allowed pursuant to the provisions of section six hundred fourteen or six hundred thirty-four, as the case may be, prorated according to the period covered by each such return."

No provision of the Tax Law requires individuals such as those described by Petitioner to itemize their deductions for personal income tax purposes.

Accordingly, the Japanese treaty traders described by Petitioner are free to claim the standard deduction on their New York State personal income tax returns in accordance with the provisions of sections 614, 634 and 654 of the Tax Law.

Additionally, it is noted that the minimum New York standard deduction available to Japanese treaty traders may be affected by the provisions of section 607(b) of the Tax Law and section 102.1(b) of the personal income tax regulations.

ISSUE (II)

Section 651(b) of the Tax Law provides that "[i]f the federal income tax of husband and wife is determined on a separate federal return, their New York income tax liabilities and returns shall be separate." Furthermore, personal income tax regulation 145.10(a) provides that "[i]f a husband and wife file separate Federal income tax returns, they must also file separate New York State personal income tax returns on separate forms."

Accordingly, since such Japanese treaty traders are forced for federal purposes to file as "married filing separately" they must file as "married filing separately on separate forms" (filing status (4)) for New York State purposes. Such traders may not file as "married filing joint return."

Finally, it is noted that the advice given above pertains to the 1986 taxable year. At the time of the drafting of this advisory opinion it appears likely that amendments to the Tax Law may mandate different results for taxable year 1987 and thereafter.

DATED: April 29, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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