

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

TSB-A-87 (6) I
Income Tax
October 29, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1870807B

On August 7, 1987, a Petition for Advisory Opinion was received from Richard Berman, 860 Longview Avenue, Valley Stream, New York 11581.

The issues raised are (1) whether a married treaty trader who is a dual-status alien for federal income tax purposes must use the New York State table for "married filing separately"; (2) whether such individual must itemize his New York State deduction rather than claim the standard deduction; (3) whether such individual must allocate his New York State deductions and exemptions by the number of full months he resides in New York State; and (4) whether such an individual who files as "married filing separately" for New York State purposes is permitted to claim a nonworking spouse as a dependent.

Petitioner specifically requests that the advice given in this advisory opinion be applicable to taxable year 1987.

Petitioner's questions relate to the New York tax treatment of "various E-1 Treaty Traders" during the year of arrival or departure from the United States. During such year, the treaty trader is a resident alien for a portion of the year and a nonresident alien for a portion of the year. For federal income tax purposes, a married treaty trader is required to use the federal table for "married filing separately" but may claim his non-working spouse as a dependent. Additionally, in the dual-status year, the treaty trader must itemize his deductions even if his itemized deductions are less than the federal standard deduction.

Issue (1)

Section 651(b) of the Tax Law provides that "[i]f the federal income tax liability of husband or wife is determined on a separate federal return, their New York income tax liabilities and returns shall be separate."

Accordingly, if the treaty trader is required to use the federal table for "married filing separately" for purposes of computing his federal income tax liability, he must use the New York State table for "married filing separately" in computing his New York State personal income tax liability.

Issue (2)

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.

For taxable year 1987, 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 " For taxable year 1987, 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 " For taxable year 1987, section 634 of the Tax Law sets forth the manner of computing the New York standard deduction of a nonresident individual.

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

Accordingly, the treaty traders are free to claim the standard deduction on their 1987 New York State personal income tax returns even though they are required to itemize for federal purposes.

Issue (3)

For taxable year 1987, 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 "

For taxable year 1987, 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."

For taxable year 1987, section 654(e) of the Tax Law provides that "[w]here two returns are required under this section, the New York personal exemptions allowable under sections six hundred sixteen and six hundred thirty-six shall be prorated, under regulations of the tax commission, between the two returns to reflect the portions of the entire taxable year during which the individual was a resident and a nonresident."

Personal income tax regulation section 148.20(a)(1) provides, in part, that "[w]here an individual is required to file two New York State personal income tax returns for the taxable year in which he changes his resident status...the amount of the New York personal exemptions allowable...must be first prorated...between the two New York State personal income tax returns according to the number of months covered by each...return." Regulation section 148.20 sets forth additional rules in this regard.

Personal income tax regulation section 148.21(f) sets forth similar rules regarding the proration of the New York standard deduction.

Accordingly, for taxable year 1987, if a treaty trader is a New York resident for a portion of the taxable year and a New York nonresident for a portion of the taxable year, he is required to file two returns and is required to prorate his personal exemptions and standard deduction according to the period covered by each return.

Issue (4)

Section 616 of the Tax Law provides, in part, that "[f]or taxable years beginning in nineteen hundred eighty-seven...a resident individual shall be allowed a New York exemption...for each exemption for which he is entitled to a deduction for the taxable year for federal income tax purposes " Section 636 of the Tax Law provides, generally, that for taxable year 1987 "[a] nonresident individual shall be allowed the same New York exemptions as are allowed by section six hundred sixteen to a resident individual.

Accordingly, for taxable year 1987, a treaty trader who files "married filing separately" for New York State purposes is permitted to claim a nonworking spouse as a dependent if he is permitted to claim such spouse as a dependent for federal income tax purposes.

DATED: October 29, 1987

s/ANDREW F. MARCHESE
Chief of Advisory Opinions

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