

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

TSB-A-89 (2) I
Income Tax
February 14, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1881006A

On October 6, 1988, a Petition for Advisory Opinion was received from Nathaniel and Patricia Moore, 810 N.W. 151st Street, Miami, Florida 33169.

The issue raised is how wages received by Petitioner, a nonresident professional football player, are allocated to New York State for taxable years 1985 and 1986 pursuant to section 632(c) of the Tax Law.

Petitioner is a professional football player with the Miami Dolphins and is a Florida resident. Petitioner plays in twenty football games per year which include both pre-season and regular season games. Petitioner plays at least one football game per year within New York State.

Pursuant to Section 632(c) of the Tax Law, "[i]f 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." (Note: Section 632(c) of the Tax Law was renumbered section 631(c) by Chapter 28 of the Laws of 1987, effective April 20, 1987, and applicable for taxable years beginning after 1987).

Section 131.18 of the personal income tax regulations provides, in part, 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.
20NYCRR 131.18(a)

Section 131.23 of the personal income tax regulations provides, in part, that:

Sections 131.15 through 131.22 of this Part 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. Where the methods provided under those sections do not so allocate and apportion those items, the Tax Commission may require a taxpayer to apportion and allocate those items under such method as it prescribes, as long as the prescribed method results in a fair and equitable apportionment and allocation. 20 NYCRR 131.23

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The allocation of income earned by Petitioner as a professional football player for services rendered as such on the basis of days worked within and without New York during the year does not result in a fair and equitable allocation of income.

Pursuant to personal income tax regulation section 131.23, nonresident professional athletes are required to allocate their wages to New York State on the basis of games played within and without the State. Matter of Roy H. and Linda White, State Tax Commission, June 20, 1980, TSB-H-80(93)I, Matter of Kareem Abdul Jabbar, State Tax Commission, April 9, 1982, TSB-H-82(76)I, and Matter of Cleon Jones and Angela Jones, State Tax Commission, August 20, 1985, TSB-H-85(33)I. The policy enunciated in the above-cited Tax Commission Decisions applies equally to all nonresident professional team athletes regardless of the sports in which they are engaged and regardless of whether their teams are based within New York or outside of New York.

Accordingly, Petitioner's wages are subject to tax on the basis of games played within and without New York State pursuant to Section 632(c) of the Tax Law and regulation section 131.23.

DATED: February 14, 1989

s/FRANK J. PUCCIA
Director
Technical Services

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