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

TSB-A-89 (5) I
Income Tax
June 14, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. I890202B

On February 2, 1989, a Petition for Advisory Opinion was received from James F. Matthews, 7 Dellwood Place, Binghamton, New York 13903.

The issue raised is whether, for personal income tax purposes, Petitioner can take a resident credit, pursuant to section 620 of the Tax Law, for "C Corp" taxes paid to North Carolina on "S Corp" earnings reported in New York State.

Petitioner is a New York State resident who is the sole shareholder of Port City Electric Company (hereinafter "Company"). Company is engaged in electrical contract construction in North Carolina and has no operations or income in New York State. Since Company does not do business in New York State, no corporate return and no S corporation election was made for New York State purposes. For federal income tax purposes, Company became an S corporation effective July 1, 1987.

North Carolina does not provide an S corporation election. Therefore, Company paid the North Carolina net income tax at the corporate level with no flow through of earnings to the stockholder.

It is Petitioner's opinion that the "C Corporation" level tax paid to North Carolina would be duplicated by New York State if the resident credit is not allowed. Petitioner contends that even though the tax is at the corporate level rather than at an individual level in North Carolina, it is on the identical business income that flows into the New York State resident income tax return.

Section 620(a) of the Tax Law provides that a resident shall be allowed a credit against the tax otherwise due under Article 22 for any income tax imposed for the taxable year by another state of the United States, a political subdivision of such state, the District of Columbia or a province of Canada, upon income both derived therefrom and subject to tax under Article 22 of the Tax Law.

Section 601 of the Tax Law imposes the personal income tax on the New York taxable income of resident individuals. Section 611 of the Tax Law provides that the New York taxable income of a resident individual is computed by subtracting from the individual's New York adjusted gross income, the individual's New York deduction and New York exemptions. The New York adjusted gross income of a resident individual is the individual's federal adjusted gross income with the modifications required by section 612 of the Tax Law. An individual's federal adjusted gross income includes a shareholder's pro rata share of a S corporation's income, loss, deduction and reduction for taxes, described in section 1366(f)(2) and (3) of the Internal Revenue Code.

Section 617(a) of the Tax Law provides that when computing New York adjusted gross income and New York taxable income of a resident shareholder of an S corporation not subject to tax under Article 9-A, any modification described in section 612(b), (c) or (d)or section 615 (c) or. (d)(2) or (B) of the Tax Law which relates to an item of S corporation income, loss or deduction shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Section 617(b) of the Tax Law provides that each item of S corporation income, loss or deduction shall have the same character for a shareholder under Article 22 as for federal income tax purposes.

When a federal S corporation is not subject to tax under Article 9-A and does not do business in New York State, the election provided for in section 660 of the Tax Law, whereby all shareholders of a federal S corporation that is subject to tax under Article 9-A may elect to treat the corporation as a New York S corporation, does not apply and the modifications contained in section 612(b)(18),(19),(20),(21) and section 612(c)(21) and (22) of the Tax Law relating to such election do not apply.

In addition, if such taxpayer computes the New York itemized deduction pursuant to section 615 of the Tax Law, the modification contained in section 615(c)(6) of the Tax Law does not apply.

Section 612(b)(3) of the Tax Law contains a modification increasing federal adjusted gross income for income taxes imposed by New York State or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax.

When computing federal adjusted gross income, Petitioner must include his pro rata share of Company's income, loss, deduction and reduction for taxes, described in section 1366(f)(2) and (3) of the Internal Revenue Code. When Company computes ordinary income from trade or business activities, Company is allowed a deduction for the income taxes Company paid to North Carolina. North Carolina imposes an income tax on the net income of corporations under Division I of Article 4, Chapter 105, General Statutes of North Carolina, as amended.

Since each item of Company's income, loss or deduction shall have the same character for Petitioner under Article 22 as for federal income tax purposes, the income tax paid to North Carolina that is deducted in computing Company's ordinary income for federal income tax purposes must be added to Petitioner's federal adjusted gross income, pursuant to section 612(b)(B) of the Tax Law, when computing New York adjusted gross income.

In the matter of W. Mason Smith v New York State Tax Commission (120 AD2d 907) the New York State Appellate Division, Supreme Court held that if a taxpayer is required to include in gross income the amount of tax paid to another state, the taxpayer must be allowed a credit for that tax. Therein, the petitioner was required to include in her New York adjusted gross income, the

income tax paid to Massachusetts by a trust. The resultant effect of this was that the petitioner had borne the burden of the income taxes paid to Massachusetts, and as such, the petitioner constructively paid "income taxes imposed for the taxable year by another state" and was therefore entitled to a credit under section 620(a) of the Tax Law.

Accordingly, herein Petitioner may claim a resident credit under section 620 of the Tax Law for income taxes paid by Company to North Carolina, when such taxes are included in Petitioner's New York taxable income pursuant to the modification contained in section 612(b)(3) of the Tax Law. The amount of resident credit allowed must be computed pursuant to such section 620 of the Tax Law.

DATED: June 14, 1989

s/FRANK J. PUCCIA
Director
Technical Services

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