

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

TSB-A-90 (1) I
Income Tax
January 3, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

Petition No. I891106A

On November 6, 1989 a Petition for Advisory Opinion was received from E. Parker Brown II, Hiscock & Barclay, Financial Plaza, P.O. Box 4878, Syracuse, New York 13221.

The issue raised by Petitioner, E. Parker Brown II, is whether pursuant to Section 131.5 of the Personal Income Tax Regulations partnership distributions of interest income derived from a note secured by a purchase money mortgage to a partner who is a nonresident individual constitutes income derived from or connected with New York sources.

A New York general partnership, holding title to one parcel of commercial property in New York State, sells the property, taking back a purchase money mortgage and a promissory note. The note obligates the buyer of the property to make interest payments on the purchase price for five years, followed by a balloon payment of the entire amount of principal.

The partnership, consisting of two partners, has no office or other facility, conducts no business, and has no asset other than the aforementioned promissory note. During the period following the sale of the property, the partnership exists purely as a passive investment vehicle to receive interest attributable to the note. The interest itself is collected by a realty company and distributed to the partners. The realty company also pays real estate taxes on the property from an escrow fund set up for that purpose.

Section 632(a)(1) of the Tax Law provides:

In determining New York source income of a nonresident partner of any partnership, there shall be included only the portion derived from or connected with New York sources of such partner's distributive share of items of partnership income, gain, loss and deduction entering into his federal adjusted gross income, as such portion shall be determined under regulations of the tax commission consistent with the applicable rules of section six hundred thirty-one.

Section 131.5(b) of the Personal Income Tax Regulations, in interpreting Section 631 of the Tax Law, provides:

Generally, where a nonresident individual sells real or tangible personal property located in New York State and, as a result of such sale receives intangible personal property (e.g., a note) which generates interest income, such interest income is not attributable to the sale of the real or tangible personal property but is attributable to the intangible personal property. Therefore, such interest income to a nonresident does not constitute income derived

from or connected with New York State sources. However, where the instrument used to generate interest income as a result of a sale of real or tangible personal property located in New York State is employed in a business, trade, profession or occupation carried on in New York State, such interest income does constitute income derived from or connected with New York State sources.

In general, the rules which determine whether or not an item of income is derived from or connected with New York sources are no different for nonresident partners than for other nonresident taxpayers. Thus in accordance with Section 632(a)(1) of the Tax Law if an item of income would not be derived from or connected with New York sources for a nonresident individual than said item of income would not be considered to be derived from or connected with New York sources for a nonresident partner.

In the instant case under the facts as set forth above if the interest payments on the note had been received by a nonresident individual, they would have been considered not to have been income derived from or connected with New York sources in accordance with the meaning and intent of Section 131.5(b) of the Personal Income Tax Regulations. Therefore if such interest payments are received by a nonresident partner they must accordingly be considered not to have been income derived from or connected with New York sources.

DATED: January 3, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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