

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

TSB-H-80-(524)-I  
Income Tax  
February 2, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I800916B

On September 16, 1980, a Petition for Advisory Opinion was received from Michael A. Badeau, 204 Mason Drive, Syracuse, New York 13219.

The issue raised is whether a taxpayer is entitled to a modification, under the Personal Income Tax imposed under Article 22 of the Tax Law, based on the payment of tuition expenses on behalf of his spouse.

Section 611(a) of the Tax Law provides that a taxpayer's New York adjusted gross income, the starting point in determining his New York taxable income, is equal to his Federal adjusted gross income as modified by certain specified additions and subtractions. Section 612(c)(17) provides for such a subtraction based on the amount of tuition paid during the taxable year "...on behalf of each dependent for full-time attendance at an institution of higher education..." The dispositive question here, then, is whether a taxpayer's spouse may be his "dependent" with the meaning of section 612(c)(17) of the Tax Law.

Section 607(a) of the Tax Law provides that terms used in Article 22 of the Tax Law "...shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required..." Federal law defines the term "dependent," for income tax purposes, in section 152 of the Internal Revenue Code. A dependent of a taxpayer is there described as an individual over half of whose support during a taxable year is received from the taxpayer and who bears any of nine specified relationships to the taxpayer. The relationship of marriage is not included in any of these categories, and indeed, the spouse of a taxpayer is explicitly excluded from the category of any individual "...who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household." 26 USCA §152(a)(9).

Accordingly, the term "dependent" as used in section 612(c)(17) of the Tax Law does not include a taxpayer's spouse and tuition payments made on behalf of such spouse may not be made the basis of a modification under such provision of law.

DATED: December 2, 1980

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau