

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-03(7)I  
Income Tax  
December 29, 2003

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I030825B

On August 25, 2003, a Petition for Advisory Opinion was received from Steven J. Eller, c/o Buchbinder Tunick & Co., LLP, One Penn Plaza, Suite 5335, New York, New York 10119.

The issue raised by Petitioner, Steven J. Eller, is whether a nonresident of New York can deduct contributions made to a spousal Individual Retirement Account (IRA) in determining New York source income under section 631 of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

A husband and wife are full year nonresidents of New York State and file federal and state personal income tax returns with a filing status *married filing jointly*. The husband is employed within New York State. The wife is not employed. In computing federal adjusted gross income, the husband and wife are allowed a deduction, pursuant to section 219 of the Internal Revenue Code (IRC), for contributions the husband made to an IRA. They are also allowed to deduct, pursuant to IRC section 219, contributions made to a spousal IRA.

**Applicable law and regulations**

IRC section 62(a) contains adjustments to gross income in computing federal adjusted gross income, and provides, in part:

General Rule. For purposes of this subtitle, the term “adjusted gross income” means, in the case of an individual, gross income minus the following deductions:

\* \* \*

(7) Retirement savings. The deduction allowed by section 219 (relating to deduction of certain retirement savings).

IRC section 219, relating to retirement savings, provides, in part:

(a) Allowance of Deduction. In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year.

(b) Maximum Amount of Deduction.

(1) In general. The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of

(A) the deductible amount, or

(B) an amount equal to the compensation includible in the individual's gross income for such taxable year.

\* \* \*

(5) Deductible amount. For purposes of paragraph (1)(A)

(A) In general. The deductible amount shall be determined in accordance with the following table:

\* \* \*

(c) Special rules for certain married individuals.

(1) In general. In the case of an individual to whom this paragraph applies for the taxable year, the limitation of paragraph (1) of subsection (b) shall be equal to the lesser of

(A) the dollar amount in effect under subsection (b)(1)(A) for the taxable year, or

(B) the sum of

(i) the compensation includible in such individual's gross income for the taxable year, plus

(ii) the compensation includible in the gross income of such individual's spouse for the taxable year reduced by

(I) the amount allowed as a deduction under subsection (a) to such spouse for such taxable year,

(II) the amount of any designated nondeductible contribution (as defined in section 408(o)) on behalf of such spouse for such taxable year, and

(III) the amount of any contribution on behalf of such spouse to a Roth IRA under section 408A for such taxable year.

(2) Individuals to whom paragraph (1) applies. Paragraph (1) shall apply to any individual if

(A) such individual files a joint return for the taxable year, and

(B) the amount of compensation (if any) includible in such individual's gross income for the taxable year is less than the compensation includible in the gross income of such individual's spouse for the taxable year.

Section 601(e) of the Tax Law imposes a personal income tax on a nonresident of New York State, and provides, in part:

Nonresidents and part-year residents. (1) General. There is hereby imposed for each taxable year on the taxable income which is derived from sources in this state of every nonresident and part-year resident individual ... a tax which shall be equal to the tax base multiplied by the New York source fraction.

(2) Tax base. The tax base is the tax computed under subsections (a) through (d) of this section, as the case may be, reduced by the credits permitted under subsections (b), (c), (d) and (m) of section six hundred six, as if such nonresident or part-year resident individual ... were a resident subject to the provisions of part II of this article.

(3) New York source fraction. The New York source fraction is a fraction the numerator of which is such individual's ... New York source income determined in accordance with part III of this article and the denominator of which is such individual's New York adjusted gross income determined in accordance with part II of this article....

Section 631(a) of the Tax Law determines New York source income of a nonresident individual, and provides, in part:

General. The New York source income of a nonresident individual shall be the sum of the following:

(1) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources ... and

(2) The portion of the modifications described in subsections (b) and (c) of section six hundred twelve which relate to income derived from New York sources....

Section 631(b)(1) of the Tax Law provides, in part:

Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

(A) the ownership of any interest in real or tangible personal property in this state;  
or

(B) a business, trade, profession or occupation carried on in this state; ...

### **Opinion**

Section 601(e) of the Tax Law imposes a personal income tax on the taxable income which is derived from New York sources of a nonresident individual. The tax is equal to the tax computed as if the individual were a New York State resident for the entire year, reduced by certain credits, and then multiplied by the income percentage (i.e., New York source fraction). The numerator of the fraction used to compute the income percentage is the individual's New York source income. The denominator of the fraction used to compute the income percentage is the nonresident's New York adjusted gross income from all sources for the entire year.

Section 631(a) of the Tax Law provides that the New York source income of a nonresident is the sum of the items of income, gain, loss and deduction entering into federal adjusted gross income derived from or connected with New York sources and any New York addition and subtraction modifications under section 612(b) and (c) of the Tax Law that relate to income derived from New York sources.

Therefore, for a federal deduction from gross income to be deductible in determining New York source income, it must be derived from or connected with New York sources. Income and deductions included in the computation of federal adjusted gross income are derived from or connected with New York sources if they are attributable to the ownership of real or tangible personal property in New York State or attributable to a business, trade, profession, or occupation carried on in New York State.

With certain limitations and restrictions, an individual can make contributions to an IRA, pursuant to sections 219 and 408 of the IRC, if such individual received compensation during the year. Compensation includes wages, salaries, tips, professional fees, bonuses, and other amounts received for personal services. Section 219 of the IRC allows an individual to deduct from federal gross income amounts paid for the taxable year by an individual on behalf of such individual to an IRA. In addition, where an individual and the individual's spouse file a joint federal income tax return for the taxable year, an individual is allowed a deduction from federal gross income for amounts paid for the taxable year by an individual or on behalf of such individual, for the benefit of the individual's spouse to an IRA.

TSB-A-03(7)I  
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In this case, the husband is employed within New York State and the husband and wife file a joint federal income tax return and are allowed a federal deduction for contributions made to a spousal IRA as a result of the husband's compensation includible in their gross income for the taxable year. Such compensation is derived from or connected with the husband's New York employment. Accordingly, the federal deduction for contributions made to the spousal IRA under section 219 of the IRC is derived from or connected with New York sources. Therefore, in determining New York State source income pursuant to section 631 of the Tax Law, the numerator of the New York source fraction includes a deduction for contributions made to a spousal IRA. The amount of the deduction for contributions made to a spousal IRA that is included in the numerator of the fraction is limited to the amount connected with compensation arising from sources within New York State. To determine the amount connected with compensation arising from sources within New York State, the spousal IRA deduction allowable for federal purposes must be multiplied by a percentage. The percentage is determined by dividing the compensation attributable to the husband's employment for personal services performed within New York State by the total compensation attributable to the husband's employment for personal services performed both within and without New York State.

DATED: December 29, 2003

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