

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

TSB-A-81 (6) I
Income Tax
July 15, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I810311A

On March 11, 1981, a Petition for Advisory Opinion was received from Sylvia Machlis, 20 East 9th Street, New York, New York 10003.

The issue raised by Petitioner is the proper treatment, for purposes of the State Personal Income Tax imposed under Article 22 of the Tax Law, of a net operating loss where Petitioner filed a separate return in the loss year, but where a joint return was filed, by Petitioner and her spouse, in a carry back year.

For taxable year 1978, Petitioner sustained a net operating loss for federal tax purposes. Petitioner and her spouse elected to file separate federal returns for 1978 and to carry the net operating loss back to their joint 1975 federal return, pursuant to 26 CFR 1.172-7(b), which provides as follows: "If a husband and wife, making a joint return for any taxable year, did not make a joint return for any of the taxable years involved in the computation of a net operating loss carryover or a net operating loss carry back to the taxable year for which the joint return is made, such separate net operating loss carryover or separate net operating loss carry back is a joint net operating loss carryover or joint net operating loss carry back to such year."

Section 612(a) of the Tax Law provides that the New York adjusted gross income of a resident individual, the starting point in determining his New York taxable income, means his federal adjusted gross income, with certain modifications. Section 62 of the Internal Revenue Code defines federal adjusted gross income as "gross income minus the deductions allowed by this chapter ... which are attributable to a trade or business carried on by the taxpayer "Net operating loss deductions, provided for under section 172 of the Code, constitute such a trade or business deductions. Therefore, the application of a federal net operating loss deduction is automatically reflected in the taxpayer's federal adjusted gross income.

Accordingly, since Petitioner is allowed to carry a separate federal net operating loss back to her joint federal return for 1975, and since such carry back affects Petitioner's federal adjusted gross income for that year, it is proper for Petitioner to carry her separate net operating loss back to her joint New York State personal income tax return for the same year.

DATED: June 23, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau