

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

TSB-A-81 (7) I  
Income Tax  
September 7, 1981

This corrected Advisory Opinion replaces  
TSB-A-81(7)-I dated July 15, 1981, which  
should be destroyed.

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I810422C

On April 22, 1981, a Petition for Advisory Opinion was received from Benjamin M. Schaffer, 441 Franklin Turnpike, Mahwah, New Jersey 07430.

The issues raised are:

- 1) whether Petitioner, who changed his status from resident to nonresident during 1981, must accrue to the portion of such taxable year prior to such change the entire amount of gain (to the extent not already included in his New York adjusted gross income for prior taxable years or otherwise so includible for such portion of 1981) from a sale made prior to such change of status, payment for which is made on an installment basis both before and after such change of status; and
- 2) whether Petitioner may avoid the requirement of accrual by filing:
  - A) an affidavit, signed by Petitioner, affirming his intention to pay the tax on such gain over a period of years as installment payments are received,
  - B) a surety bond, or
  - C) other collateral, specifically a New York State bond.

In 1979, while he was a resident of New York, Petitioner sold his New York business. Payments for such business were scheduled on an installment basis over a period from 1979 to 1984. In January of 1981, Petitioner changed his residence from New York to New Jersey. The installment payments received or to be received subsequent to Petitioner's change of residence are the subject matter of the Petition.

Section 654(c)(1) of the Tax Law provides, in part:

"If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible ... or allowable for New York income tax purposes for such portion of the taxable year or for a prior taxable year."

Section 654(c)(4) of the Tax Law provides:

"The accruals under this subsection shall not be required if the individual files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the inclusion of amounts accruable under this subsection in New York adjusted gross income for one or more subsequent taxable years as if the individual had not changed his resident status."

Section 148.11(a) of the Personal Income Tax Regulations (20 NYCRR 148.11(a)) provides, in part:

"The return for the period prior to a change from resident to nonresident status may be filed without the special accruals referred to herein if the taxpayer files with the Tax Commission a surety bond or other security acceptable to the Tax Commission, in an amount not less than the amount of additional income tax which would be payable if no such bond or security were filed."

Section 148.11(c) of such regulations provides:

"In lieu of a surety bond, the following security will be accepted:

- (1) United States Treasury bonds
- (2) Bonds of the State of New York
- (3) Bonds of any political subdivision of New York State...
- (4) Other security acceptable to the Tax Commission."

Accordingly, Petitioner is advised that, except as provided below, he is required to accrue the entire amount of the gain from the sale of his business (to the extent not already included in his New York adjusted gross income for prior taxable years or otherwise so includible for the subject portion of 1981) to the portion of the subject taxable year prior to his change of residence from New York to New Jersey.

Petitioner is further advised that the affidavit proposed in his Petition is not permitted by law or regulation as a substitute for the required accrual. However, the filing of either a surety bond or a bond of the State of New York which meets all of the requirements of section 148.11 of the Personal Income Tax Regulations (20 NYCRR 148.11) would be an acceptable substitute for the required accrual. In such case, Petitioner would have to include in his New York adjusted gross income for subsequent taxable years such amounts as would have been so included for such years if Petitioner had not changed his resident status. It is to be noted that interest on an installment sale contract which involves the sale of the assets of a business carried on in New York is not accruable upon a change of residence. The unearned interest income as of the date of the change of residence is to be reported on nonresident returns for the years in which such income is received.

DATED: June 23, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau