

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

TSB-A-82 (1) I
Income Tax
April 2, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1811102A

On November 2, 1981, a Petition for Advisory Opinion was received from Lothar F. Gue, 50 East 89th Street, New York, New York 10028.

The issue raised is whether an addition to tax may be imposed, based on failure to file a declaration or underpayment of estimated tax, under the Personal Income Tax imposed under Article 22 of the Tax Law, where a taxpayer has both a net operating loss and a liability for minimum income tax with respect to a given taxable year. The conclusion reached below is that under such circumstances a taxpayer would not be required to file a declaration of, nor make payment of, estimated tax and that, therefore, no such addition to tax may be imposed.

Section 685(c) of the Tax Law provides for an addition to tax where a taxpayer "fails to file a declaration of estimated tax or fails to pay all or any part of an installment of estimated tax " Section 656(a) of the Tax Law requires payments of estimated tax "with respect to which a declaration is required." Declarations of estimated tax are required to be filed, pursuant to section 655(a) of the Tax Law, by any taxpayer whose "New York adjusted gross income, other than from wages on which tax is withheld under this article, can reasonably be expected to exceed four hundred dollars plus the sum of the New York personal exemptions to which he is entitled."

In the present instance Petitioner did not have a New York adjusted gross income in excess of the amount specified in section 655(a) of the Tax Law with respect to the taxable year in question. Accordingly, he was not required to file a declaration of estimated tax, nor to make payments of such tax. It follows that no addition to tax may be made based on a failure to file a declaration of, or make payment of, estimated tax. This conclusion is in no way altered by the fact that Petitioner had a liability for minimum income tax with respect to the taxable year in question, inasmuch as the controlling statutory provision does not include such liability as one of the criteria for a taxpayer's obligation to file a declaration and make payments of estimated tax. Nor is the conclusion here arrived at in any way vitiated by the fact that where a taxpayer is required to file a declaration of estimated tax, he is required to include in such estimated tax the sum of all of the taxes imposed under Article 22 of the Tax Law, including the minimum income tax.

DATED: March 16, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau