

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

TSB-A-82 (7) I
Income Tax
October 15, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1820824A

On August 24, 1982, a Petition for Advisory Opinion was received from Alan S. and Billie Ballou, 190 Haverstraw Road, Suffern, New York 10901.

The issue raised is whether the credit provided for by section 620 of the Tax Law is applicable against the tax imposed under section 601-A of the Tax Law in the circumstances described below.

During 1981, one of the Petitioners, a resident of New York, realized a capital gain upon the sale of partnership assets associated with a New Jersey partnership. Minimum income tax with respect to such capital gain was paid to both New York and New Jersey. Petitioners presently seek a refund of their New York minimum income tax payment, based on the application to such tax of the credit provided for under section 620 of the Tax Law.

Article 22 of the Tax Law imposes the Personal Income Tax. Section 601, contained in such article, imposes the general personal income tax, while sections 601-A, 601-C and 601-D impose separate taxes which are in addition to the tax imposed under section 601. Section 601-A impose the minimum income tax. Section 620 provides for a credit, available to residents only, against "the tax otherwise due under the article for any income tax imposed . . . "by, among other jurisdictions, another state. Section 622(d) clarifies the meaning of the phrase "the tax otherwise due under this article, " and concludes the issue herein against Petitioners, by explicitly providing that the resident credit provided for under section 620 may not be applied against the minimum income tax imposed under section 601-A. In light of the explicit statutory prohibition against the application of the resident credit to the minimum income tax, Petitioners' contention, to the effect that both the New York and New Jersey taxes on the capital gain are in reality taxes on income, warrants no conclusion contrary to that expressed herein.

DATED: October 12, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau