

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

TSB-A-84 (4) I
Income Tax
October 17, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1840913A

On September 13, 1984 a Petition for Advisory Opinion was received from John F. Pascucci, 137 Crooks Avenue, Clifton, New Jersey 07011.

The issue raised is whether payments which Petitioner is entitled to receive from a New Jersey lottery, which he won while a resident of New Jersey, are accruable and therefore not subject to the New York State Personal Income Tax imposed under Article 22 of the Tax Law should Petitioner change his state of residence to New York.

Petitioner, a resident of New Jersey at the time, won the top prize for the New Jersey Pick-6 Lotto Drawing held on June 7, 1984. The total amount of Petitioner's annuity prize is \$1,227,573.00. He will receive an initial payment of \$47,258.00 and 19 subsequent yearly installment payments in the amount of \$49,200.00. All payments are net of the twenty percent (20%) federal withholding tax. In the event of Petitioner's death prior to the expiration of the pay-out period the full proceeds of the lottery will be paid to his named testamentary beneficiaries.

Section 654(c)(2) of the Tax Law provides that where an individual changes his status from nonresident to resident, such individual must, 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. The phrase "accruing prior to the change of status" refers to items "required to be included if a Federal income tax return were being filed for the same period on an accrual basis." 20 NYCRR 148.10(a). The applicable Federal regulation provides that "Under an accrual method of accounting, income is includible in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy." 26 C.F.R. 1.451-1.

Section 654(c)(3) of the Tax Law provides that "No item of income. . ." accrued under section 654(c) of the Tax Law "shall be taken into account in determining New York adjusted gross income. . . for any subsequent taxable period."

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Accordingly, based on the information set forth above, the lottery winnings to be received by Petitioner were fixed and determinable prior to the proposed change of residence, and thus would be accrued to the taxable period prior to such change of residence, pursuant to section 654(c)(2) of the Tax Law. It follows that in any subsequent taxable period the lottery winnings will not be taken into account in determining Petitioner's New York adjusted gross income.

DATED: October 5, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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