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

TSB-A-90 (3) I
Income Tax
January 18, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. I891121A

On November 21, 1989 a Petition for Advisory Opinion was received from Ronald S. Rosenblatt, 50 Crawford Terrace, Riverside, Connecticut 06878.

The issue raised by Petitioner, Ronald S. Rosenblatt, is whether as a nonresident working in New York he is entitled to deduct all or a portion of alimony payments paid to his spouse from whom he is legally separated.

Petitioner is a nonresident of the State of New York. He is employed in New York State. In 1988 he paid $9,000.00 in alimony to his resident spouse from whom he is legally separated. In 1989 he will pay her $11,000.00 in alimony. She is paying New York State income tax on the alimony payments she receives.

Section 601(e) of the Tax Law, as added by 1987 NY Laws, Chapter 28 Section 3 (as subsequently amended) and applicable to taxable years after 1987 provides in part:

> "Nonresidents...(1) There is hereby imposed for each taxable year on the taxable income which is derived from sources in this state of every nonresident...individual...a tax which shall be equal to the tax computed under subsections (a) through (d) of this section, as the case may be, reduced by the credits permitted under subsections (b) and (c) of section six hundred six, as if such nonresident... individual .... were a resident, multiplied by a fraction, the numerator of which is such individual's .... New York source income determined in accordance with Part III of this article and the denominator of which is such individual's federal adjusted gross income for the taxable year.

Section 631(b)(6) of the Tax Law, as added by 1987 NY Laws, Chapter 28, Section 78 and applicable to taxable years after 1987 provides:

> "The deduction allowed by section two hundred fifteen of the internal revenue code, relating to alimony, shall not constitute a deduction derived from New York sources."

Therefore, a nonresident individual computes his New York taxable income by first determining what the tax due would be if he were a resident individual and then by multiplying the tax shown as due by a fraction whose numerator is his New York source income and whose denominator is his Federal adjusted gross income in accordance with Section 601(e) of the Tax Law. In computing the tax as if a resident and in computing his Federal adjusted gross income the individual has deducted alimony payments made to his spouse. However he cannot deduct such payments in computing his New York source income numerator since under Section 631(b)(6) alimony paid by a nonresident to a resident is not considered a deduction derived from New York

sources. This section specifically reversed Friedson v State Tax Commission, 64 NY2d 76 (1984), which had allowed an alimony deduction to a nonresident according to the formula for allocation of itemized deductions by the nonresident. The effect of the allowance of the deduction in the base and the denominator and disallowance in the numerator is that Petitioner cannot get the benefit of a proportional deduction of the alimony payments made to his spouse in 1988 or 1989.

DATED: January 18, 1990

s/PAUL B. C0BURN
Deputy Director
Taxpayer Services Division

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