

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

TSB-A-98(2) I
Income Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I971126C

On November 26, 1997, a Petition for Advisory Opinion was received from David C. Mallen, 8 Tanglewood Road, New Hartford, New York 13413.

The issue raised by Petitioner, David C. Mallen, is whether a lump sum payment for accumulated sick leave should be excluded from New York taxable income under Article 22 of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner was a nonresident of New York State and was employed by the State of Florida. Petitioner's tenth anniversary with the State of Florida was November 1, 1995, and during his employment he accumulated sick leave hours.

It is the policy and routine practice of the State of Florida to issue a one time payment for accumulated sick leave for any employee who terminates his employment with the State on or after his tenth year of employment. The policy allows the State to reimburse an employee 25 percent of accumulated hours at the employee's current rate of pay.

Petitioner terminated his employment with the State of Florida after his tenth anniversary. This was prior to his employment or residency in New York State. Petitioner's full time employment in New York State commenced officially on November 27, 1995. He did not become a resident of New York until December 10, 1995.

In February 1996, Petitioner received a lump sum payment of \$3,453.98 for the sick leave hours accumulated over the 10 year period he was employed by the State of Florida.

Section 611 of the Tax Law provides that the New York taxable income of a resident individual is the individual's New York adjusted gross income less the individual's New York deduction and New York exemptions as determined under Article 22 of the Tax Law.

Section 639(b) of the Tax Law provides for accruals when an individual changes status from a nonresident to a resident of New York State. It provides as follows:

If an individual changes status from nonresident to resident [the individual] shall, regardless of [the individual's] method of accounting, accrue to the period of nonresidence any items of income, gain, loss or deduction, items of tax preference or ordinary income portion of a lump sum distribution accruing prior to the change of status, with the applicable modifications and adjustments to federal adjusted gross income, itemized deductions and items of tax preference under sections six hundred twelve, six hundred fifteen and six hundred twenty-two, other than items derived from or connected with New York sources, if not otherwise properly includible or allowable for New York income tax purposes for such period or for a prior taxable year under [the individual's] method of accounting.

Section 639(c) of the Tax Law provides that "no item of income, gain, loss, deduction, item of tax preference, ordinary income portion of a lump sum distribution or modification or adjustment which is accrued under this section shall be taken into account in determining the tax under this article for any subsequent taxable year."

In this case, Petitioner accumulated sick leave hours over a 10 year period that was attributable to his employment by the State of Florida. Petitioner terminated his employment with the State of Florida in 1995, and, in February 1996 Petitioner received a lump sum payment for the accumulated sick leave hours. Petitioner was not employed in New York State nor did he become a resident of New York State until after he terminated his employment with the State of Florida.

Accordingly, pursuant to section 639 of the Tax Law, the lump sum payment of \$3,453.98 that Petitioner received in 1996, for accumulated sick leave hours attributable to Petitioner's employment by the State of Florida prior to Petitioner's change of residence to New York State, is accruable to the nonresident period prior to 1996 and not subject to New York State personal income tax for tax year 1996. When computing New York taxable income for 1996, Petitioner should exclude the amount of the lump sum payment as well as any applicable modifications and adjustments to federal adjusted gross income, itemized deductions and items of tax preference, determined under sections 612, 615, and 622 of the Tax Law, that are attributable to such income.

It should be noted that, since Petitioner was a part-year resident of New York State in 1995, for taxable year 1995, Petitioner is subject to New York State tax personal income tax on income received from New York sources while a nonresident and on all income received while a resident of New York State. The tax is equal to the tax computed as if Petitioner were a resident for the entire year, reduced by certain credits and multiplied by the New York source fraction, the numerator of which is the sum of Petitioner's New York adjusted gross income from New York sources for the nonresident period and all New York adjusted gross

income for the resident period and the denominator of which is Petitioner's New York adjusted gross income for the entire year. In this instance, in determining the tax computed as if Petitioner were a resident and the denominator of the New York source fraction, Petitioner must include in New York adjusted gross income, the amount of the accrued sick leave payment that was not received until 1996. This accrual would not be included in the numerator because it would be non New York source income accrued to the nonresident period.

DATED: February 2, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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