

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(4)I
Income Tax
July 24, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I011005A

On October 5, 2001, a Petition for Advisory Opinion was received from Simone Zaino, 2065 Valentine Road, Westbury, New York 11590.

The issue raised by Petitioner, Simone Zaino, is whether a New York State resident individual may claim a resident tax credit, pursuant to section 620 of the Tax Law, for income taxes paid to another state on slot machine winnings from a casino.

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

On June 18, 2001, Petitioner, an individual domiciled in New York State, won a jackpot on a slot machine at the Trump Taj Majal Casino in Atlantic City, New Jersey. Pursuant to New Jersey Tax Law, Petitioner filed a New Jersey Non-Resident Gross Income Tax Return and paid tax on the slot machine winnings.

Law and Regulations

Section 54A:2-1.1 of the New Jersey Gross Income Tax Law ("NJ Tax Law") provides that the tax due each taxable year from a nonresident taxpayer shall be equal to the tax computed as if the nonresident taxpayer were a resident, multiplied by a fraction. The numerator of the fraction is the taxpayer's income from sources within New Jersey determined in accordance with the provisions of sections 54A:5-7 and 54A:5-8 of the NJ Tax Law and the denominator of the fraction is the taxpayer's gross income for the taxable year as if the taxpayer were a resident of New Jersey. Section 54A:5-1(g) of the NJ Tax Law provides that New Jersey gross income includes gambling winnings. Section 54A:5-8(a)(5) of the NJ Tax Law provides that income from sources within New Jersey for nonresidents includes items of income attributable to wagering transactions in New Jersey other than from the New Jersey State Lottery. On July 2, 1993, the New Jersey Division of Taxation issued Technical Bulletin, TB-20-Gambling Winnings of Nonresidents. The Technical Bulletin provides that income received by a nonresident from wagering transactions in New Jersey includes winnings from casino betting and wagering and slot machines.

Section 620(a) of the Tax Law provides, in part:

General. A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States ... upon income both derived therefrom and subject to tax under this article. The term "income tax imposed" in the previous sentence shall not include the portion of such tax (determined in the manner provided for in section

six hundred twenty-A) which is imposed upon the ordinary income portion (or part thereof) of a lump sum distribution which is subject to the separate tax imposed by section six hundred one-C.

Section 120.1(a) of the New York State Personal Income Tax Regulations (“Income Tax Regulations”) provides, in part:

General. (1) Where a resident individual receives income derived from sources within another state of the United States ... [the individual] is entitled to a credit against [the individual’s] ordinary tax ... for any income tax imposed on such income by the other jurisdiction

(2) The credit against ordinary tax is allowable only for that portion of the income tax imposed by another state of the United States ... which is applicable to the income derived from sources within such other taxing jurisdiction....

Section 120.4(c) of the Income Tax Regulations provides, in part:

The "income tax imposed by the other jurisdiction" means the total income tax payable thereto for the taxable year, exclusive of the portion of such tax ... which is imposed on the ordinary income portion (or part thereof) of a lump sum distribution, and any interest or penalties. No resident credit is allowable if no tax is actually due to the other jurisdiction

Section 120.4(d) of the Income Tax Regulations provides, in part:

"Income derived from sources within" another state ... is construed so as to accord with the definition of the term "derived from or connected with New York State sources" ... Thus, the resident credit against ordinary tax is allowable for income tax imposed by another jurisdiction upon compensation for personal services performed in the other jurisdiction, income from a business, trade or profession carried on in the other jurisdiction, and income from real or tangible personal property situated in the other jurisdiction. On the other hand, the resident credit is not allowed for tax imposed by another jurisdiction upon income from intangibles, except where such income is from property employed in a business, trade or profession carried on in the other jurisdiction. Thus, for example, no resident credit is allowable for an income tax of another jurisdiction on dividend income not derived from property employed in a business, trade or profession carried on in such jurisdiction.

Section 631(a) of the Tax Law provides, in part:

The New York source income of a nonresident individual shall be the sum of the following: (1) The net amount of items of income, gain, loss and deduction entering into [the individual's] federal adjusted gross income, as defined in the laws of the United States for the taxable year, derived from or connected with New York sources

Section 631(b) of the Tax Law provides, in part:

Income and deductions from New York sources.

(1) Items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to:

(A) the ownership of any interest in real or tangible personal property in this state; or

(B) a business, trade, profession or occupation carried on in this state; or

(C) in the case of a shareholder of an S corporation where the election provided for in subsection (a) of section six hundred sixty of this article is in effect, the ownership of shares issued by such corporation, to the extent determined under section six hundred thirty-two of this article; or

(D) winnings from a wager placed in a lottery conducted by the division of the lottery, if the proceeds from such wager exceed five thousand dollars.

(2) Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state or from winnings from a wager placed in a lottery conducted by the division of the lottery, if the proceeds from such wager exceed five thousand dollars.

Opinion

In the Matter of Jane A. Mallinckrodt, Dec Tax App Trib, November 12, 1992, TSB-D-92(23)I, the Tax Appeals Tribunal explained that in order to receive a credit for tax paid to another state, a taxpayer must prove three separate elements: 1) that another state of the United States imposed a tax on the subject income; 2) that the income was derived from another state of the United States; and 3) the income was subject to tax under Article 22 of the Tax Law.

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In this case, the question arises whether the gambling winnings received by Petitioner were derived from New Jersey within the meaning of section 620(a) of the Tax Law and section 120.4(d) of the Income Tax Regulations. Income derived from New Jersey sources is construed to accord with the definition of the term “derived from or connected with New York State sources,” as set forth in section 631(b) of the Tax Law. Assuming that gambling was not Petitioner’s business or profession undertaken within New Jersey, nor compensation for personal services performed by Petitioner in New Jersey, the gambling winnings are not considered “derived from sources within another state” as required in Section 620(a) of the Tax Law.

Accordingly, Petitioner is not entitled to a resident tax credit under section 620 of the Tax Law for income taxes paid to the state of New Jersey on the slot machine winnings.

DATED: July 24, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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