

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

TSB-A-88 (6) I
Income Tax
May 25, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I880128A

On January 28, 1988, a Petition for Advisory Opinion was received from Licia Albanese Gimma, Nathan Hale Drive, Norwalk, Connecticut.

The issue raised is whether, for taxable year 1987, the gain realized on the sale of stock in a cooperative housing corporation is subject to New York personal income tax under Article 22 of the Tax Law when the owner was a non-resident of New York State at the time of the sale and the cooperative apartment was partially used for business purposes. Additionally, if the gain is subject to tax, to what extent is it taxable?

Petitioner was the sole owner of shares of stock in a cooperative housing corporation in New York City. She shared her cooperative apartment with her husband. Petitioner used twelve and one-half percent of the apartment for business purposes and claimed 12½% of the maintenance of such apartment as a business deduction.

Petitioner states that in November of 1986, she bought a house in Connecticut and moved there, establishing Connecticut residency. Petitioner's husband continues to be a New York resident and purchased his own cooperative apartment in New York City on January 12, 1987.

In March of 1987, Petitioner sold her shares in the New York City cooperative housing corporation for a substantial gain. The New York State real property transfer gains tax was paid on the 12½% portion used for business.

For taxable year 1987, section 632(b)(2) of the Tax Law provided that "[i]ncome 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."

It has been determined that gain from the sale of stock in a cooperative housing corporation is taxable in the same manner as gain from the sale of any other stock and, therefore, nonresidents are not taxable with respect to gain from the sale of stock in a cooperative housing corporation unless the apartment was devoted to business purposes. Letter of Director of Technical Services Bureau, Department of Taxation and Finance, April 28, 1981.

Herein, Petitioner has sold a cooperative apartment that was partly used for business purposes. Section 632(b)(2), in effect for taxable year 1987, provided that income from intangible property constitutes New York income to the extent such income is from property employed in a business carried on in New York State.

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Accordingly, assuming Petitioner was a nonresident for taxable year 1987, Petitioner must include in New York adjusted gross income, the portion of the gain on the sale of the cooperative apartment that is attributable to the use of such apartment for business purposes; that is, 12½% of the gain.

DATED: May 25, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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