

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

TSB-A-82 (4) I
Income Tax
July 9, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I820113A

On January 13, 1982 a Petition for Advisory Opinion was received from Marvin Rosenblum, Pequot Drive, Norwalk, Connecticut 06855.

The issue raised is the proper characterization of payments to a nonresident individual, for purposes of the Personal Income Tax imposed under Article 22 of the Tax Law and the New York City Earnings Tax on Nonresidents imposed under Title U of the Administration Code of the City of New York, under the circumstances described below.

Petitioner states that he has been employed by Gulf & Western Industries, Inc. (hereinafter "Gulf & Western") at its Stamford, Connecticut office since 1972. He states that he has been granted a leave of absence from his regular duties to assume a position with the New York State Legislative Tax Study Commission at the Commission's New York City office. He further states that during his "leave of absence" he will continue to be paid by Gulf & Western, receiving from the Commission only reimbursement of out of pocket expenses. Petitioner urges that the payments received from Gulf & Western represent "deferred compensation paid for past service in Conn., and as such not taxable in the state of New York or the City of New York."

Upon request, Petitioner has submitted as evidence of his agreement with Gulf & Western a letter from a Senior Vice President thereof which provides, in relevant part, as follows:

"This letter is to advise you that Gulf & Western Industries, Inc. ("Gulf & Western") will grant you a leave of absence from your present position with the company for the fifteen month period commencing January 4, 1982. During your leave, Gulf & Western will continue to pay you full salary and you will be entitled to all other employee benefits currently available to you as if you continued in your current position as a full time Gulf & Western employee.

This leave is granted to enable you to assume the position of Director of Tax Administration Reform for the newly constituted New York State Tax Reform Commission (the "Commission"). Recognizing the Commission's meritorious goals and the valuable contributions we are confident you will make, Gulf & Western, in the interest of public service, is pleased to allow you this opportunity to assume the directorship, if at any time during the fifteen month period, your services are, for any reason, no longer required by the Commission, your leave of absence will then terminate, and, per our understanding, you will return to work in the position you occupied at the time your leave commenced.

During your leave of absence 7 our services may be required by Gulf & Western for short periods of time to assist in matters begun prior to your leave of absence. You have agreed that during your leave, you will assist Gulf & Western in these matters at such time and in such manner as will

not conflict with the performance of your duties for the New York State Tax Reform Commission. However, under no circumstances will you perform any services which would or could be construed to present a conflict of interest."

Section 632(a) of the Tax Law provides that the New York adjusted gross income of a nonresident individual, the starting point in computing his New York taxable income, shall be the net amount of items of income, gain, loss, and deduction entering into his federal adjusted gross income which are "derived from or connected with New York sources."

Section 632(b)(1) provides, in part, that items of gain, loss, and deduction derived from or connected with New York sources shall be those items attributable to a business, trade, profession or occupation carried on in this state.

The New York City Earnings Tax on Nonresidents, imposed under Title U of the Administrative Code of the City of New York, is imposed on wages and net earnings from self-employment earned within the City of New York. Administrative Code of the City of New York, §U46-2.0.

Several factors contained in the above-described submissions warrant the conclusion that the income in question is "derived from or connected with New York sources" and "earned within" the City of New York, insofar as the described services are performed within New York and New York City, respectively. First, it appears from the submitted agreement that Petitioner is not simply on paid leave, free to do what he will with his own time, but is released from his regular assignment for the single purpose of serving with the Legislative Tax Study Commission. Further, it is there provided that upon his services' no longer being required by the Commission he is to return to his former position at Gulf & Western. In addition, the agreement letter specifically recites that Gulf & Western's release of Petitioner from his regular duties (with its attendant costs) is "in the interest of public service," rather than representing a form of deferred compensation or other reward for past services. Further, the agreement also provides that Petitioner may during the period in question assist Gulf & Western for short periods of time, but no provision is made for any extra payment for such services. Finally, it is to be noted that the present matter is to be distinguished from Matter of Morris D. Crawford, Jr. and Dorothy B. Crawford, State Tax Commission, January 29, 1982, TSB-H-82(7)-I, in that payment in the latter case was made by the governmental entity rather than the individual's regular employer. The contrary is the case herein.

Accordingly, pursuant to the foregoing, the subject payments constitute income "derived from or connected with New York sources" and "earned within the City of New York."

DATED: June 18, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau