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

TSB-A-86 (1) I
Income Tax
April 17, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. I850708A

On July 8, 1985, a Petition for Advisory Opinion was received from Venero Pagano, c/o Joseph Pagano, 3516 Laconia Avenue, Bronx, New York 10469.

The issue raised is whether New York State Lottery winnings of a resident individual will be subject to the personal income tax imposed under Article 22 of the Tax Law if such individual becomes a nonresident.

In 1984, Petitioner, a resident of New York State, was a Jackpot Winner in the New York State Lotto Game. Petitioner was advised by a letter from John D. Quinn, Director of the New York State Lottery, dated August 9, 1984, "You won a prize of $7,895,380 payable over 20 years in accordance with lottery rules. With interest, you will receive a total of $20,000,000 over the twenty year period."

Petitioner is assured of receiving $20,000,000 in Lotto prize winnings. There are no contingencies to be met to receive the money. Even in the event of the death of Petitioner before the expiration of the twenty year period, the remaining payments will be made to Petitioner's estate (Division of the Lottery Regulations, 21NYCRR 2803.9).

Petitioner is a cash basis taxpayer and receives his prize once a year in June. Petitioner is contemplating changing his residence and domicile to another state and questions the effect of such a change on the taxability of his winnings.

Initially, it must be noted that pursuant to regulations of the Division of the Lottery (21NYCRR 2817.4), a portion of the money wagered by players in the Lotto game is used by the Division of the Lottery to purchase United States government securities. The interest earned on these securities is used to pay Lotto prizes. The securities are owned by the Division of the Lottery. Interest on the securities is owned by and paid to the Division of the Lottery. No amount of this interest is paid as interest to the Petitioner. In the case of Petitioner, $7,895,380 represents the amount of cash available in the prize fund. The $20,000,000 represents the total prize money to be paid to Petitioner.

Section 654(c)(1) of the Tax Law provides, in part:

> (c) Special accruals. (I) If an individual changes his status from resident to nonresident, he shall, regardless of his method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status, if not otherwise properly includible (whether or not because of an election to report on an installment basis) or allowable for New York income tax purposes for such portion of the taxable year or for a prior taxable year ....

Pursuant to this provision, a taxpayer who changes status from resident to nonresident is required to include in the resident portion of his or her year any income which has accrued before the date of the taxpayer's change of residence. This is done whether the taxpayer is a cash basis or accrual basis taxpayer.

Federal income tax regulations are instructive in determining whether income has accrued within the meaning of section 654(c)(1) of the Tax Law. They provide:

> Generally, under an accrual method, income is to be included for the taxable year when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. (26 CFR 1.446-1(c)(1)(ii)).

In interpreting this provision, the court in Flamingo Resort, Inc. v. United States, 485 F. Supp. 926 (1980), stated:

> .... the key concept for accrual of income is that the right to receive income must be fixed or unconditional. This comports with the plain meaning of the language used in the regulations. The reference to the occurrence of "all events" seems to denote the absence of a contingency on the right to receive the income.

Furthermore, it is well established that an absolute right to receive income gives rise to the accrual of such income notwithstanding that payment of the income is not to be made until some future date. Helvering v. Enright, 41-1 USTC 260, para. 9356, 312 U.S. 636, 6I S.Ct. 777; H.H. Brown Co. v. Commissioner 8 BTA 112, Dec. 2803; Missisquoi Corp. v. Commissioner, 2 TCM 957, Dec. 13,568.

Accordingly, since Petitioner received an absolute, unconditional right without contingency to receive the entire $20,000,000 and since the amount to be received can be determined with absolute accuracy, the entire unpaid portion of the $20,000,000 prize must be accrued by Petitioner and included by him in his New York adjusted gross income in the resident portion of his taxable year in which he changes his status from resident to nonresident. Any amount received by Petitioner during the taxable year of his change of resident status must also be included by Petitioner in his New York adjusted gross income.

However, section 654(c)(4) of the Tax Law provides:

> (4) The accruals under this subsection shall not be required if the individual files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the inclusion of amounts accruable under this subsection in New York adjusted gross income for one or more subsequent taxable years as if the individual had not changed his resident status.

Pursuant to this provision, Petitioner may avoid the requirement to accrue his lottery winnings by filing a suitable bond or other security with the Tax Commission. Petitioner must then include such winnings in his New York adjusted gross income for the year in which such winnings are actually received by Petitioner.

DATED: December 30, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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