STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
WILLIAM AND PATRICIA LONGSON	:	DETERMINATION DTA NO. 814583
for Redetermination of a Deficiency or for Refund of Personal Income Tax under Article 22 of the Tax Law for the Year 1992.	:	

Petitioners, William and Patricia Longson, 1706 Kilruss Drive, Venice, Florida 34292, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law.

A hearing was held before Joseph W. Pinto, Jr.,[1] Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on July 11, 1996 at 9:15 A.M., with all briefs to be submitted by September 30, 1996. Petitioners' reply brief was received on September 26, 1996, which date began the six-month period for the issuance of this determination. Petitioners appeared pro se. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Gary Palmer and Justine S. Clarke, Esqs., of counsel).

ISSUE

Whether the Division of Taxation, when requiring petitioners to accrue their entire gain from a 1991 installment sale of New Jersey property in 1992 when they changed their residence from New York to Florida, was also required to allow petitioners to accrue their New York

[1]On December 10, 1996 both parties were informed by letter that due to the appointment of Administrative Law Judge Pinto to the Tax Appeals Tribunal, Administrative Law Judge Roberta Moseley Nero had been assigned to complete the case.

State resident tax credit for any taxes that would be required to be paid to New Jersey in relation to the installment sale after 1992.[2]

FINDINGS OF FACT

1. Petitioners resided in New York State during all of 1991. On February 7, 1991, petitioners sold certain real estate situated in the state of New Jersey on the installment method.[3]

On their 1991 Federal income tax return petitioners reported $76,206.06 in capital gains, including a $75,573.13 long-term capital gain on the payments received in 1991 from the installment sale of the New Jersey property.

On their 1991 IT-201, New York State Resident Income Tax Return, petitioners reported $76,206.06 in capital gains. Petitioners filed an IT-112-R, New York State Resident Tax Credit, for 1991 wherein they calculated a credit of $2,559.16 for New Jersey taxes paid, including taxes paid on the gain on the payments received in 1991 from the installment sale of the New Jersey property.

2. In April of 1992, petitioners moved to Florida. On their 1992 Federal income tax return petitioners reported $15,167.04 in capital gains, including a $10,467.80 long-term capital gain on the payments received in 1992 from the installment sale of the New Jersey property.

For the tax year 1992 petitioners' filed a New York State IT-203 Nonresident and Part-Year Resident Income Tax Return. Petitioners reported $15,167.04 for the Federal amount of capital gains for the year and $4,765.48 for the New York State amount. Petitioners filed an IT-112-R, New York State Resident Tax Credit, for 1992 wherein they calculated a credit of

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[2]Petitioners, in their petition, argued that the Division of Taxation administered the income tax statutes in an unconstitutional manner in this case and that petitioners' right to equal protection of the laws was violated. However, petitioners make no mention of the constitutional argument in either their written or oral presentations at hearing or their post-hearing submissions. Therefore, the argument is deemed abandoned and will not be addressed in this determination.

[3]There is no direct evidence of the sale of the New Jersey property or any installment agreement related to the sale. The date and fact of the sale are inferred from petitioners' 1991 Federal income tax return and the tacit agreement of the parties.

$371.95 for New Jersey taxes paid, including taxes paid on the gain on the payments received in 1992 from the installment sale of the New Jersey property.[4]

3. On January 13, 1995 the Division of Taxation (hereinafter "Division") issued a Statement of Proposed Audit Changes for 1992 to petitioners which set forth an amount due of $19,235.54, exclusive of interest. The tax due was calculated utilizing a several step process. First, the notice explained that an error had been made in petitioners' calculation of their New York capital gains. The notice set forth the proper calculation of petitioners' 1992 New York capital gains as follows:

"STOCK SALE OF 2/3/92	$ 896.59
INSTALLMENT SALE GAIN	$10,467.80
BALANCE	$11,364.39
REPORTED	-4,765.48
NY ADJUSTMENT	$ 6,598.91"

The notice explained that pursuant to Tax Law § 638(c)(1), petitioners were required to accrue the balance of the gain to be received from the installment sale in the resident period of the last year they were residents of New York. This adjustment was calculated as follows:

"INSTALLMENT SALE ACCRUAL ADJUSTMENT:

Total gain	$339,154.46
less amount reported	
1991	-75,573.13
1992	-10,467.80
BALANCE ACCRUED	$253,113.53"

The remainder of the statement simply calculates the tax due using the adjusted amount for New York capital gains of $264,477.92 ($6,598.91 plus $253,113.53) and an adjusted Federal amount for capital gains including the accrual of $268,280.57. These calculations resulted in the tax due of $19,235.54.

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[4]It is unclear how petitioners determined the New York State amount of capital gains. The Division of Taxation in its post hearing brief states that petitioners failed to report any capital gain resulting from the installment sale in their 1992 New York amount, and that they then claimed the entire amount of 1992 New Jersey taxes paid in relation to this transaction when calculating the credit. Petitioners respond that they claimed a proportionate share of both the income and the credit. However, the Division of Taxation's calculations as set forth in Finding of Fact "4" simply recalculate petitioners 1992 New York capital gains and subtract the $4,765.48 reported by petitioners to reach the New York adjustment. Furthermore, the Division allowed the entire resident tax credit as calculated by petitioners for 1992. Therefore, the parties' discussion of this issue appears gratuitous.

The notice also explained that pursuant to Tax Law § 638(c)(4), if a bond or other acceptable security were filed with the Division, then petitioners could file each year thereafter as if they had remained residents of New York State.

4. On May 8, 1995, the Division issued a Notice of Deficiency (Assessment number L-009965092) to petitioners in the amount of $19,235.54 in tax, exclusive of interest.

5. On October 13, 1995, a Conciliation Order was issued recomputing the statutory notice to $19,213.00 in tax due, exclusive of interest.

6. The Division of Tax Appeals received the petition in this matter on December 14, 1996.

SUMMARY OF THE PARTIES' POSITIONS

7. It is the position of petitioners that while they were required to accrue to their New York period of residence in 1992 the entire gain on the installment sale of the property in New Jersey, they should also have been allowed a credit equal to an accrual of all the resident income tax credits they would have been allowed to take had they remained residents of New York State for the taxes paid to the State of New Jersey on the same transaction.

8. The Division contends that while petitioners were required to accrue the entire amount of the gain to 1992 they are not allowed to accrue the credit because the credit is allowed only for income tax imposed by another jurisdiction for the taxable year. The Division contends that petitioners had the choice of filing a bond for the total amount of the installment sale gain and then filing a return every year as if they were residents on which they could have claimed the resident tax credit for the taxes paid to New Jersey each year.

9. Petitioners' response to this argument is that pursuant to Tax Law former § 638(c)(1) they are to accrue both the gain and the deductions. Furthermore, they refused to file a bond or post security under Tax Law former § 638(c)(4) because the Division failed to take into account the taxes to be paid to New Jersey when determining the amount of the bond.

CONCLUSIONS OF LAW

A. In 1991 petitioners, while residents of New York, sold property in New Jersey on an installment basis. The income they received in 1991 from this sale appeared on their 1991 Federal income tax return as a capital gain, in particular, income from an installment sale. Pursuant to IRC § 453, petitioners were required to report the sale of the New Jersey property using the installment method because it was a sale where at least one payment was going to be received after the end of the tax year in which the property was sold.[5] Installment method is defined by IRC § 453(c) as:

> "a method under which the income recognized for any taxable year from a disposition is that proportion of the payments received in that year which the gross profit (realized or to be realized when payment is completed) bears to the total contract price."

Reporting utilizing the installment method is a benefit to the taxpayer because it "allows the profits on an installment sale to be taxed over the period the payments are received rather than in the year of sale." (West's Tax Law Dictionary 283 [1992 ed].)

New York and New Jersey allowed the capital gain realized by petitioners to be reported on the installment method, following the Federal rule. Petitioners filed 1991 New York resident and New Jersey nonresident returns showing the income they received in 1991 from the installment sale accordingly.

Since petitioners paid tax to New Jersey and New York for 1991 on this transaction they were entitled to a resident tax credit on their 1991 New York resident return pursuant to Tax Law § 620(a) which provides:

> "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 . . . upon income both derived therefrom and subject to tax under this article."

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[5]The only manner in which the petitioners could have not used the installment method to report their income on this transaction was to file a formal election out with the Internal Revenue Service pursuant to IRC § 453(d) on or before the due date of their 1991 return.

B. In 1992, petitioners moved from New York to Florida. They reported the income they received in 1992 from the sale of the New Jersey property on their Federal and New Jersey nonresident returns in the same manner as they had in 1991.

On their 1992 New York State part-year return, petitioners reported the installment sale income in the same manner but only reported part of the income, apparently assuming that since they lived in New York for only part of the year they were required to pay tax only on a proportionate share of the income. Petitioners also claimed the resident tax credit for 1992 for taxes paid to New Jersey (see, Finding of Fact "2", Footnote "4").

However, because of petitioners' move to Florida in 1992, they were required to accrue the entire remaining gain from the installment sale to the resident portion of 1992. Tax Law former § 638(c)(1), in effect during the year at issue, provided as follows:

> "If an individual changes his status from resident to nonresident he shall, regardless of his method of accounting, accrue to 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 entering into his federal adjusted gross income for such portion of the taxable year or a prior taxable year under his method of accounting." (emphasis added.)

Petitioners have not contested the accrual of the entire gain to the resident portion of their 1992 New York part-year return. Rather, the issue in this case is simply whether the language in the statute requiring accrual of all losses and deductions allows petitioners, after having accrued the total gain on their installment sale to the resident portion of their 1992 return and calculating the tax due, to deduct a credit in the amount of all the resident tax credits they would have been allowed had they remained residents of New York State for taxes paid to New Jersey on the installment sale transaction.

C. When construing a statute the primary focus is on the intent of the Legislature in enacting the statute (McKinney's Cons Laws of NY, Book 1, Statutes § 92[a]; see, Matter of Sutka v. Connors, 73 NY2d 395, 541 NYS2d 191; Matter of American Communications Technology v. State of New York Tax Appeals Tribunal, 185 AD2d 79, 592 NYS2d 147, affd, 83 NY2d 773, 611 NYS2d 125). When that intent is clear from the wording of the statute itself, the inquiry ends (McKinney's Cons Laws of NY, Book 1, Statutes § 76; see, Matter of

American Communications Technology v. State of New York Tax Appeals Tribunal, supra). Terms with a specific technical or commonly used meaning are to be given that meaning in statutory interpretation (McKinney's Cons Laws of NY, Book 1, Statutes § 233; see, Matter of Moran Towing and Transp. Co. v. New York State Tax Commn., 72 NY2d 166, 531 NYS2d 885; People v. Hunter, 49 AD2d 751, 372 NYS2d 692).

Petitioners are arguing that Tax Law former § 638 is clear on its face; that the plain meaning of the terms losses and deductions includes the resident tax credit. I cannot agree. Pursuant to the plain meaning of the term "credit" under the Tax Law, a credit is by definition not a loss or deduction. The term deduction as used in both Federal and State taxation has a very specific meaning. As stated by the Tax Appeals Tribunal:

> "Although not defined in either the Tax Law or the Internal Revenue Code, 'deduction' is a term of art with a well-established meaning in the area of taxation, and is defined as 'amounts allowed by law to reduce income prior to application of the tax rate to compute the amount of tax which is due' (West's Tax Law Dictionary 131 [1992 ed], emphasis added)." (Matter of Amsterdam Savings Bank, Tax Appeals Tribunal, March 11, 1993.)

Losses are also not defined in the Internal Revenue Code or Tax Law, but are commonly known to be a particular type of deduction described as follows:

> "In general, there is allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise" (West's Tax Law Dictionary 320 [1992 ed]).

On the other hand, a credit is defined as:

> "an allowance against the tax itself. . . . Credits directly reduce tax liability, while deductions reduce income subject to tax" (West's Tax Law Dictionary 120 [1992 ed]).

Losses and deductions are subtracted from a taxpayer's gross income to arrive at adjusted gross income and finally taxable income. Once taxable income has been calculated, a tax rate is applied to arrive at tax due. It is then that a taxpayer deducts credits. Credits are always deducted dollar for dollar from the amount of tax due. Because deductions (including losses) and credits are commonly understood to be distinct and separate concepts, it can only be concluded that a literal reading of Tax Law former § 638 does not allow petitioners to accrue

any credits they would have received for future payments of New Jersey taxes, because credits are not losses or deductions.

D. The only difficulty with this analysis is that it is also true that a literal reading of an apparently unambiguous statute cannot be allowed to control where such reading "contravenes the legislative intent or leads to an unreasonable result" (Le Drugstore Etats Unis v. New York State Bd. of Pharmacy, 33 NY2d 298, 302, 352 NYS2d 188; see, McKinney's Cons Laws of NY, Book 1, Statutes § 111; Matter of Federal Ins. Co. v. State Tax Commn., 146 AD2d 888, 536 NYS2d 595). In this case petitioners are arguing that reading the accrual provision to not allow for accrual of the resident tax credit leads to an unreasonable result (double taxation) in direct contravention of the legislative intent behind Tax Law § 620 (to prevent double taxation). The Division argues that the language in Tax Law former § 638 requiring accruals of losses and deductions for part-year residents cannot be read to include the resident tax credit provided for in Tax Law § 620 because that credit is allowed only for taxes paid to another jurisdiction for the current year. Furthermore, the Division argues that petitioners cannot be allowed to deduct the resident tax credit for future years when they are no longer New York residents because the credit is not available to nonresidents. In response the petitioners argue that accruing the credit for taxes paid to New Jersey in future years is no different from requiring them to accrue the entire gain from the sale of the New Jersey property to their resident period for 1992 because they were still residents for the period for which they were claiming the accrued credit.

It is true that Tax Law § 620 "was designed to protect New York residents from being subjected to double taxation" (Smith v. New York State Tax Comm, 120 AD2d 907, 503 NYS2d 169). It is also true that Tax Law former § 638 and Tax Law § 620 must be read together when determining if there is any ambiguity in the statutes as written (McKinney's Cons Laws of NY, Book 1, Statutes § 76; see, Matter of Sutka v. Connors, supra; Matter of American Communications Technology v. State of New York Tax Appeals Tribunal, supra). Petitioners must show a clear legislative intent that they are entitled to accrue their resident tax credits for future years, since petitioners' interpretation seems contrary to the plain language of

the statute (see, Matter of Federal Ins. Co. v. State Tax Commn., supra, Matter of United Sates Life Ins. Co. in City of N.Y., 194 AD2d 952, 599 NYS2d 168, lv denied 82 NY2d 657, 604 NYS2d 556).

A plain reading of Tax Law former § 638 requires that petitioners accrue all of their installment sale gain to the resident portion of their 1992 New York part-year return. A plain reading of Tax Law § 620 allows a credit against taxes due to New York of taxes paid to another state only when the taxpayer is a resident of New York and the taxes of the other state were imposed for the taxable year. When read together and applied to petitioners circumstances, I find that requiring accrual of installment sale income to petitioners New York residency period in 1992 and not allowing petitioners to "accrue" any future resident tax credits is not contrary to the legislative intent of Tax Law § 620 to protect New York State residents from double taxation. (see, Matter of Guzzardi v. Director, Div. of Taxation, 15 NJ Tax 395.)

Accruing the installment sale gain and accruing the future tax credits are not equivalent as suggested by petitioners. As discussed above, the installment sale method of reporting income is an accounting method designed to benefit taxpayers. Under normal accounting methods a capital gain on real property is deemed to have occurred when title and the rights and responsibilities of ownership of the property pass to the buyer (7 Stand Fed Tax Rep [CCH] ¶ 21,006.063). In reality, petitioners' capital gain on the sale of the New Jersey property occurred in 1991 upon the sale of the property. It was only the artificial concept of the installment method of accounting that allowed petitioners to report their gain based upon income received each year in the first instance. Therefore, the requirement of Tax Law former § 638 that the entire amount of a capital gain resulting from an installment sale be "accrued" to the resident portion of a final part-year return, while obviously enacted as a collection device, only requires that the the installment sale transaction be reported in a manner reflecting reality.

In contrast, the resident tax credit on its face is allowed only for residents of New York State and only for taxes imposed by another jurisdiction for the tax year. Its purpose is to protect New York residents from possible double taxation in a given tax year. It is entirely

consistent for the Division to disallow this credit in this case since New Jersey had not yet imposed a tax on petitioners' income for years after 1992 and petitioners were no longer residents of New York after 1992.

Petitioners simply have not shown any inconsistencies between the Division's application of the statutes in this matter, the plain meaning of the statutes and/or the legislative purpose behind adoption of the statutes. Therefor the plain meaning of the statutes controls, and petitioners are not allowed to "accrue" resident tax credits for future years before the taxes are imposed by the other jurisdiction, and for years when they have not been or will not be residents of New York.

E. The result in this case appears to be inequitable since petitioners will be paying tax to New York and New Jersey on income from the same transaction. However, not only is that what a plain reading of the statutes requires, but there was another option available to petitioners. Tax Law former § 638(c)(4), in effect during the year at issue, provided the following limited exception to the requirement that petitioners accrue their installment sale income to 1992:

> "The accruals under this subsection shall not be required if the individual files with the tax commission[6] 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 or New York source income for one or more subsequent taxable years as if the individual had not changed his resident status."

It is uncontested that petitioners refused to avail themselves of the protection afforded by this section. If petitioners had filed a bond or other security acceptable to the Division, they would have been deemed residents every year for the purpose of reporting the installment sale and would have been entitled to the resident tax credit. Petitioners assert that they did not file a bond because the Division would not give them credit for the future taxes owed to New Jersey in determining the amount of the bond. Pursuant to 20 NYCRR 154.11(a)(1) the amount of any

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[6] For the years in question, the term "tax commission" in this section should be interpreted as the Commissioner of Taxation and Finance. (See, Tax Law § 177.)

bond filed is determined to be not less than the tax that would have been due if a bond had not been filed. Therefore, the Division correctly determined the amount of the bond.

F. The petition of William and Patricia Longson is denied and the Notice of Deficiency dated May 8, 1995, as recomputed by the Conciliation Order dated October 13, 1995 is sustained.

DATED: Troy, New York
March 20, 1997

/s/ Roberta Moseley Nero
ADMINISTRATIVE LAW JUDGE