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## Letter Ruling 87-10: Partnership, Credit to Partners for Taxes Paid Another Jurisdiction

September 28, 1987

You ask for a ruling on the availability of the credit for taxes due another state to partners of a partnership in the circumstances you describe. You represent the Massachusetts general and limited partners of a Massachusetts limited partnership whose primary purpose is investing in a limited partnership interest in a New Hampshire partnership. The New Hampshire partnership invested in New Hampshire real property and now proposes to sell the property at a substantial gain. The State of New Hampshire imposes a tax on the net business profits of partnerships at the entity, rather than partner, level. Business profits are defined as Federal gross income less certain deductions specified in New Hampshire Rev. Stat. Ann. sec. 77-A:4. Both partnerships are calendar year partnerships, and the New Hampshire Business Profits Tax return is due April 15 for the preceding calendar year.

You request a ruling on the following questions:

- 1). Can the Massachusetts limited partners (the partners) of a Massachusetts partnership credit against their Massachusetts income taxes their distributive shares of the New Hampshire Business Profits Tax paid by the New Hampshire partnership, on its New Hampshire business activities?
- 2). Can the credit, if allowed, be applied against the Massachusetts partners, tax liabilities in the year in which the partnership income was included in the partner's Massachusetts gross income, even if the actual payment of the New Hampshire Business Profits Tax is made in a later year?

We conclude and rule as follows. A resident is allowed a credit for taxes due any other state on account of any item of Massachusetts gross income. G.L. c. 62, 5 6(a). Therefore,

- 1). The Massachusetts partners of the Massachusetts partnership investing in a New Hampshire partnership can credit against their personal income taxes their distributive shares of the New Hampshire partnership's payment of the New Hampshire Business Profits Tax because:
  - a. The Massachusetts partners include in their gross incomes their distributive shares of the Massachusetts partnership's income from the New Hampshire partnership's sale of property; and
  - b. The New Hampshire Business Profits Tax is a tax due another state on account of the income from the sale of the property; and the items of income and credit retain their character when they are distributed to the partners.
- 2). A credit is allowed against Massachusetts taxes under G.L. c.62, § 6(a) for taxes due any other state on account of any item of Massachusetts gross income. The credit is applied in the taxable year in which income taxable in any other state is included in Massachusetts gross income. The credit is determined by the existence of a tax liability to another state.

The initial determination to be made is whether the partners have an item of Massachusetts gross income. A partnership as such is not subject to Massachusetts tax; but individuals carrying on business as partners are liable for taxes in their individual capacities. G.L. c. 62, § 17. A resident who is a member of a partnership is subject to tax on his distributive share of partnership income.

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G.L. c. 62, § 17(a). The Massachusetts limited partnership's gross income includes its distributive share of the gain distributed by the New Hampshire partnership; and the Massachusetts partners include in their gross incomes their distributive shares of the Massachusetts partnership's income.

The next determination to be made is whether New Hampshire's tax on business profits is a tax due another state on account of an item of Massachusetts gross income. The New Hampshire Business Profits Tax is a tax imposed on the taxable business profits of every business organization, including partnerships, in New Hampshire. N.H. Rev. Stat. Ann. § 77-A:2, reprinted at [NH] ST. TAX REP. (CCH) 1115-301. Taxable profits for partnerships include ordinary income, payments to partners, and gains on the sale of property. N.H. Rev. Stat. Ann. § 77-A:1, III (c), reprinted at [NH] ST. TAX REP. (CCH) 1191-603. Under Massachusetts law the character of any item of income, loss, deduction or credit included in a partner's distributive share shall be determined as if such item were realized directly by the partner from the source from which the partnership realized it or incurred directly by the partner in the manner in which the partnership incurred it. G.L. c. 62, § 17(c). Both the income and the tax payment retain their character and are passed through the Massachusetts partnership to the Massachusetts partners. It follows that the partners may apply their distributive shares of the New Hampshire tax payment as credits against their Massachusetts income tax under G.L. c. 62, § 6(a). If the partners use the New Hampshire Business Profits Tax as a credit, the partnership cannot deduct the tax liability from its gross income in computing its ordinary distributable income.

A partner must include his distributive share of the various classes of income, losses, deductions, and credits in his taxable year during which or with which the taxable year of the partnership ends. G.L. c. 62, § 17(d). This provision is the same-as the federal provision at I.R.C. § 706(a) and is consistent with the requirement that Massachusetts gross income means federal gross income, with certain modifications not relevant here. G.L. c. 62, 2(a).

The credit is allowed for taxes due any other state on account of any item of Massachusetts gross income. G.L. c. 62, § 6(a). when this provision was originally enacted, the credit was allowed only for taxes paid other states. St. 1957. c. 677, 5 6. The statute was amended the next year to allow the credit for taxes due other states. St. 1958, c. 489, 5 1. The statute requires the existence of a tax liability in the partner's taxable year to another state on account of an item of Massachusetts gross income and effectively treats all taxpayers as accrual basis taxpayers with respect to this item. See U.S. Treas. Reg. § 1.446-1(c)(1)(i) and (ii); U.S. Treas. Reg. § 1.461-1(a)(1) and (2).

/s/ Stephen Kidder  
Commissioner of Revenue  
September 28, 1987  
LR 87-10