

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-15(6)I
Income Tax
July 15, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I140527B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] "Petitioner". Petitioner asks whether distributions to her from her Federal Thrift Savings Plan (TSP) account will be exempt from New York State income tax, and, if so, will she also be entitled to withdraw an additional \$20,000 tax free from an IRA or other retirement account.

We conclude that distributions that are attributable to contributions made by Petitioner and her employer to her TSP account while she was a Federal employee, including the accumulated earnings from those contributions, will be exempt from New York State income tax, if the amounts are included in Petitioner's Federal adjusted gross income (FAGI). The distributions that are attributable to a rollover IRA account established by Petitioner while she was employed in the private sector, including the accumulated earnings, may be excluded in an amount not to exceed \$20,000, if Petitioner meets all the requirements in Tax Law §612(c)(3-a).

Facts

Petitioner is employed by the Internal Revenue Service (IRS) and is a member of the Federal Employees' Retirement System (FERS). FERS is a 3-part retirement package available to Federal employees under which the employees are eligible after retirement for a basic annuity, Social Security, and distributions from a TSP. The TSP, established by § 8437 of Title 5 of the United States Code (USC), is a retirement savings and investment plan. As a defined contribution plan, the TSP offers the same types of savings and benefits to Federal employees that many private corporations offer their employees under IRC § 401(k) plans, and it is treated for tax purposes as a trust under IRC § 401(a). *See* USC Title 5, § 8440. The account may include contributions made by the account owner and the account owner's Federal employer and the earnings associated with those contributions, as well as funds transferred to the TSP account from an account owner's nongovernmental retirement account and its associated earnings.

Petitioner is planning to retire from the IRS in 2015 after 24 years of employment. She will be over 60 years old at that time. When she retires, Petitioner will receive a pension from the FERS. She also plans to withdraw approximately \$30,000 a year from her TSP account.

Prior to joining the IRS, Petitioner had a career in the private sector. During that time, she created an IRA. In 2010, Petitioner rolled over this IRA to her TSP account. At that point, 80% of the value of her TSP account was derived from contributions made while she was a Federal employee, and 20% was derived from the rolled over IRA. Petitioner plans to withdraw 20% of her TSP account prior to her retirement and deposit the money in a brokerage account.

Analysis

Generally, Federal pensions earned by officers and employees of the United States or its instrumentalities are not subject to income tax by New York State, to the extent they are includible in FAGI. *See* Tax Law § 612(c)(3)(ii). Pensions and annuities that are included in FAGI but are not excluded from New York State income tax pursuant to § 612(c)(3)(ii) may qualify for an exclusion, not exceeding \$20,000, under Tax Law § 612(c)(3-a), if all the statutory requirements are met.

The term “pension” is not defined in Article 22 of the Tax Law. However, Tax Law §607 provides that any term used in Article 22 shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required. We have opined that payments paid from a qualified pension plan within the meaning of IRC § 401 would constitute a “pension within the meaning of Tax Law §§ 612(c)(3) and 612(c)(3-a).” *See* TSB-A-94(1)(I) and TSB-A-01(1)I. Regulation 20 NYCRR 112.3(c)(1)(i)(b) provides that retirement benefits (including but not limited to annuities, interest, and lump sum payments) that are included in FAGI, that are related to services performed as public officers or public employees, and all or a portion of which are actually contributed by the Federal government, shall be subtracted from FAGI in determining the New York adjusted gross income (NYAGI) of a resident individual. Thus, we conclude that distributions to Petitioner from her TSP account that are attributable to Petitioner’s IRS wages or contributions to her TSP account made by her Federal employer and paid to her after her retirement, shall be subtracted from Petitioner’s NYAGI, to the extent that they are included in Petitioner’s FAGI.

Distributions to Petitioner from Petitioner’s TSP account that are attributable to the rollover IRA established while the Petitioner was employed in the private sector will not be eligible for an exclusion under Tax Law § 612(c)(3)(ii), because the contributions to that account were not related to services Petitioner performed as a Federal employee and none were contributed by her Federal employer. However, these distributions may be eligible for an exclusion, not in excess of \$20,000, under Tax Law § 612(c)(3-a), provided that all the requirements of that section are met.

DATED: July 15, 2015

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.