

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

TSB-A-94 (10) I
Income Tax
July 14, 1994

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I940418B

On April 18, 1994, a Petition for Advisory Opinion was received from John E. Ormsby, 65 Theresa Court, Toms River, New Jersey 08753.

The issue raised by Petitioner, John E. Ormsby, is whether investment income earned while a nonresident in an IRA account and in an employee savings plan account is taxable under Article 22 of the Tax Law.

Petitioner worked in New York State until his retirement in 1990. In June, 1991, Petitioner moved out of New York State and became a nonresident.

When Petitioner retired, he withdrew his pension in a lump sum and rolled it into an IRA. Petitioner also has an employee savings plan. Petitioner has not yet made any withdrawals, but when he does he can either roll that into an IRA or choose to pay a separate tax on the lump sum in the year of full withdrawal. There were no contributions to either plan by Petitioner or his employer after his retirement in 1990.

Petitioner has no New York source investments in his IRA or employee savings plan accounts.

Section 631(a) of the Tax Law provides, in part, that "It]he New York source income of a nonresident individual shall be the sum of the net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income ... derived from or connected with New York sources " Section 631(b) of the Tax Law provides, in part, that "[i]tems of income, 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 "

Inasmuch as contributions to an IRA allowed by section 219 of the Internal Revenue Code ("IRC") are contingent upon a taxpayer's employment in a business, trade, profession or occupation, the distributions from an IRA are deemed for purposes of section 631(b) of the Tax Law to be derived from or connected with a business, trade, profession or occupation. Robert Vincent Smith, Adv Op St Tax Comm, March 7, 1986, TSB-A-86(3)I.

Section 408(d) of the IRC provides, in part, that "any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided in section 72". Distributions are taxed in the year they are distributed. If an individual withdraws an amount from an IRA and the individual had previously made both deductible and nondeductible IRA contributions, the amount excludible from income for the tax year is that portion of the amount withdrawn which bears the same ratio as the individual's aggregate nondeductible IRA contributions bear to

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the aggregate balance on the last day of the taxable year of all IRAs of the individual. See Internal Revenue Service Notice 87-16, 1987-1 CB 446.

Contributions to IRA's and income earned on such contributions lose their individual character when withdrawn from the IRA and are, instead, simply characterized as distributions from an IRA. Richard W. Kaszubinski, Adv Op St Tax Comm, April 16, 1984, TSB-A-84(1)I. In Kaszubinski, the corpus of the IRA account was invested solely in New York or Puerto Rico municipal bonds and obligations. For Federal income tax purposes, where the funds contributed to an IRA are invested in municipal bonds, the interest on which is ordinarily excluded from gross income under section 103 of the IRC, such interest upon its exiting the IRA loses its character as tax-exempt interest and takes its place, as ordinary income, in Federal gross income and Federal adjusted gross income, and is thus subject to Federal income tax. That is, the IRC characterized the distribution from the IRA as a species of income different from exempt municipal bond interest, albeit without giving such income a distinct name. Section 607 of the Tax Law provides that terms used in Article 22 are to be given 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." Thus, for New York State personal income tax purposes and for Federal income tax purposes, earnings from an IRA are treated in the same manner as the contributions to such IRA. Accordingly, any reference in this advisory opinion to distributions from an IRA is intended to include both contributions and income earned on such contributions. Robert Vincent Smith, supra.

Accordingly, distributions from Petitioner's IRA while a nonresident are included in Petitioner's Federal adjusted gross income and, pursuant to section 631(b) of the Tax Law, are included in Petitioner's New York adjusted gross income as an item of income derived from or connected with New York sources to the extent that Petitioner's contributions to the IRA are attributable to services performed within New York State.

When Petitioner makes a full withdrawal from his employee savings plan account, Petitioner can either roll it into an IRA or choose to pay a separate tax on the lump sum distribution in the year of withdrawal. If Petitioner rolls his employee savings plan account into an IRA, the IRA treatment described above with respect to the pension rollover will also apply to the employee savings plan account rollover. If Petitioner elects for Federal income tax purposes to pay a separate tax on the lump sum distribution from the employee savings plan account, Petitioner will pay a separate tax on the lump sum distribution for New York State personal income tax purposes.

Section 603 of the Tax Law imposes, for each taxable year, a separate tax on the ordinary income portion of a lump sum distribution of every individual that has made an election of lump sum treatment under section 402(e) of the IRC.

Section 637 of the Tax Law provides that the tax imposed under section 603 of the Tax Law for any taxable year, with respect to the ordinary income portion of a lump sum distribution received by a nonresident individual shall be applicable to the ordinary income portion of a lump sum distribution wholly or partly derived from or connected with New York sources and the amount of such tax shall be computed in the same manner as that set forth in section 624 of the Tax Law.

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Section 142.1(a)(1) of the Personal Income Tax Regulations provides that the ordinary income portion of a lump sum distribution is wholly derived from or connected with New York State sources if the distribution is received by a nonresident taxpayer from a qualified plan established for either a resident individual or for a nonresident individual who performed services wholly within New York State as an employee, a sole proprietor or a partner.

Accordingly, the lump sum distribution of Petitioner's employee savings plan account would include the earnings from both Petitioner's resident and nonresident periods. Like the distributions from an IRA, the taxation of Petitioner's lump sum distribution under section 603 of the Tax Law is based on Petitioner's services performed within New York State regardless of where Petitioner resides and no distinction is made between the resident and nonresident earnings in Petitioner's employee savings plan account. Pursuant to section 637 of the Tax Law and section 142.1 of the Personal Income Tax Regulations, the entire ordinary income portion of Petitioner's lump sum distribution would be derived from or connected with New York State sources if Petitioner performed services wholly within New York State as an employee, a sole proprietor or a partner.

DATED: July 14, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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