

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(9)I
Income Tax
December 16, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I020510B

On May 10, 2002, a Petition for Advisory Opinion was received from Robert Weitzman, 455 F.D.R. Drive, Apt. B901, New York, NY 10002.

The issue raised by Petitioner, Robert Weitzman, is whether distributions received from an Internal Revenue Code section 403(b) tax-deferred annuity plan (IRC 403(b) plan) are exempt from New York State personal income tax pursuant to section 612(c)(3)(i) of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a retired high school teacher from the Board of Education of the City of New York. Petitioner is seventy-five years of age and receives the required minimum distribution from his New York City Teacher's Retirement IRC 403(b) plan.

Applicable Law

Section 403(b)(1) of the Internal Revenue Code contains employee annuity provisions for a beneficiary under an annuity purchased by a public school, and provides, in part:

General rule. If -

(A) an annuity contract is purchased -

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing . . .

* * *

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

* * *

and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). . . .

Section 3109-A of the Education Law authorizes the reduction of salaries of teachers in New York City school districts for the purpose of purchasing tax deferred annuities. The tax deferred annuity program of the New York City Teachers' Retirement System, which implements this provision, is set forth in section 13-582 of the Administrative Code of the City of New York (New York Administrative Code).

Section 13-582.a of the New York Administrative Code provides that "Any member for whom a salary reduction agreement is executed pursuant to . . . section three thousand one hundred nine-A of the education law shall thereby become a participant in the tax-deferred annuity program. . . ."

Section 13-582.f of the New York Administrative Code adopts the provisions of section 13-561 of the New York Administrative Code by reference, and provides that as such section applies "to the contributions made by a contributor and the benefits provided thereby, shall apply separately and independently to the tax-deferred annuity net contributions and the benefits provided thereby"

Section 13-561 of the New York Administrative Code, as amended by Chapter 248 of the Laws of 1994, (formerly section B20-48.0 as enacted by Chapter 929 of the Laws of 1937) provides a general state and local income tax exemption for payments made under the New York City Teacher's Retirement System, and provides, in part:

Exemption from tax, execution, etc. The right of a person to a pension, a pension-providing-for-increased-take-home-pay, an annuity, or a retirement

allowance, to the return of contributions, the pension, pension-providing-for-increased-take-home-pay, annuity, or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds provided for by this chapter, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment or any other process whatsoever, and shall be unassignable except as in this chapter specifically otherwise provided. . . .

Section 612(a) of the Tax Law provides:

General. The New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section.

Section 612(c) of the Tax Law provides, in part:

Modifications reducing federal adjusted gross income. There shall be subtracted from federal adjusted gross income:

* * *

(3)(i) Pensions to officers and employees of this state, its subdivisions and agencies, to the extent includible in gross income for federal income tax purposes;

Opinion

Pursuant to section 3109-A of the Education Law, a person employed by the Board of Education of the City of New York may agree to reduce his or her annual salary and become a participant in a tax deferred annuity program. The New York City Teachers' Retirement System tax deferred annuity program is authorized by section 403(b) of the Internal Revenue Code, and is maintained pursuant to section 13-582 of the New York Administrative Code. Distributions from the IRC 403(b) plan maintained pursuant to section 13-582 of the New York Administrative Code are exempt from New York State and New York City personal income taxes pursuant to section 13-561 of the New York Administrative Code.

Accordingly, distributions received by Petitioner from his New York City Teachers' Retirement IRC 403(b) plan are exempt from New York State personal income tax pursuant to section 13-561 of the New York Administrative Code. In view of this conclusion, it is not

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necessary to consider whether the provisions of section 612(c)(3)(i) of the Tax Law apply to the distributions received by Petitioner from his New York City Teachers' Retirement IRC 403(b) plan.

DATED: December 16, 2002

/s/
Jonathan Pessen
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Technical Services Division

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