

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

TSB-A-15(2)I
Income Tax
March 23, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. I140224A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether, for purposes of determining New York taxable income, she may subtract from federal gross income post-tax contributions she made to a Keogh Plan and subsequently rolled over to an Individual Retirement Account from which she is now receiving required minimum distributions.

We conclude that Article 22 of the Tax Law contains no provision that specifically permits a New York resident taxpayer to subtract post-tax contributions to a qualified retirement plan from federal gross income in the year of distribution to determine New York taxable income. However, the subtraction from federal adjusted gross income described under New York Tax Law § 612(c)(3-a), which excludes distributions from qualified retirement plans not exceeding \$20,000 from New York taxable income, could apply under Petitioner’s facts.

Facts

In 1998 and 1999, Petitioner was a self-employed resident of New Jersey. During that period, Petitioner made contributions to a Keogh Plan, a qualified retirement plan under the Internal Revenue Code (IRC). Under New Jersey law, contributions to a Keogh Plan are not tax deductible, but such contributions are deductible upon distribution. Petitioner reported the amount of her contributions as ordinary income on her 1998 and 1999 New Jersey state income tax returns and deducted the amount of the contributions on her federal income tax returns for those years. For purposes of this advisory opinion, these amounts will be referred to as post-tax contributions.

In 2002, Petitioner terminated the Keogh Plan and rolled over the proceeds into an existing traditional individual retirement account (IRA). She subsequently became a full time New York resident. After Petitioner turned 70½ in 2013, she was required to take minimum distributions from the IRA. When the Petitioner began to prepare her 2013 New York resident income tax return, she was unable to find a method for deducting the amount of her post-tax contributions to the Keogh Plan from her federal adjusted income for purposes of determining her New York taxable income. After referring to New York State Department of Taxation forms and instructions, she requested an advisory opinion on the tax treatment of her post-tax contributions that were rolled over to her IRA.

Analysis

New York taxable income of full-time residents is defined under Article 22 (Personal Income Tax) of the Tax Law as "...New York adjusted gross income less New York deduction and New York exemptions...". Tax Law § 611. In turn, New York adjusted gross income is defined as the taxpayer's federal adjusted gross income as adjusted by additions and subtractions under Tax Law § 612. Tax Law § 612(a).

Federal adjusted gross income is a taxpayer's federal gross income as modified under the Internal Revenue Code (IRC). Federal adjusted gross income is determined, in part, from "all income from whatever source derived" less certain deductions. IRC §§ 61, 62. Federal gross income includes distributions from individual retirement accounts under IRC § 408(d): "[e]xcept as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income...". IRC § 408(d). Neither IRC § 72 nor IRC § 408, which govern distributions from IRAs under the IRC, provides for a deduction from federal gross income of IRA distributions funded with post-state tax dollars. IRC § 408A, which covers Roth IRAs, provides for an exclusion of distributions from federal gross income, but is inapplicable to IRAs governed by IRC § 408. Thus, the distributions from Petitioner's IRA would be included in federal adjusted gross income, which is the starting point for computing her New York adjusted gross income.

New York Tax Law § 612(c)(3-a) allows a subtraction from federal gross income, for purposes of calculation of New York adjusted gross income, of an amount not exceeding \$20,000 received from pensions and annuities by resident taxpayers who have attained the age of 59½: "...the term 'pensions and annuities' shall also include distributions received by an individual who has attained the age of fifty-nine and one-half from an individual retirement account...." In this case, Petitioner may subtract up to \$20,000 in IRA distributions from her federal adjusted gross income for purposes of determining her New York taxable income pursuant to Tax Law § 612(c)(3-a). Any distributions from her IRA other than those amounts that can be subtracted from federal adjusted gross income under Tax Law § 612 are properly included in Petitioner's New York adjusted gross income. *See* TSB-A-10(6)I; *see also* TSB-A-02(5)I.

DATED: March 23, 2015

/S/

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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.