



## **Advisory Opinion: TSB-A-24(10)I**

The Department of Taxation and Finance received a Petition for Advisory Opinion from [ REDACTED ] (“Petitioner”). Petitioner asks whether a distribution from an Individual Retirement Account (“IRA”) funded solely with funds from Petitioner’s Thrift Savings Plan (“TSP”) after retirement by a rollover distribution from the TSP into the IRA may be subtracted from federal adjusted gross income (“FAGI”) in determining New York adjusted gross income (“NYAGI”) under Tax Law § 612(c)(3)(ii).

We conclude that distributions from Petitioner’s IRA that were funded with contributions from Petitioner’s TSP account qualify for the subtraction modification under Tax Law § 612(c)(3)(ii) to the extent that the distribution represents a return of the amount rolled over.

### **Facts**

Petitioner retired from the IRS on December 31, 2011. During Petitioner’s service with the IRS, Petitioner participated in the Federal Employees’ Retirement Service (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. A TSP, established by 5 USC § 8437, is a retirement savings and investment plan and is treated for tax purposes as a trust under Internal Revenue Code (“IRC”) § 401(a). 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. See 5 USC § 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 from an account owner’s nongovernmental retirement account and its associated earnings. See TSB-A-15(6)I. During Petitioner’s employment, contributions were made to Petitioner’s TSP account by Petitioner and the Federal Government. Petitioner did not transfer any funds from a nongovernmental retirement account to the TSP. After Petitioner retired, Petitioner transferred \$200,000 of the TSP funds into an IRA.

### **Analysis**

Tax Law § 612(c)(3)(ii) provides a subtraction modification for “pensions to officers and employees of the United States of America ... or any agency or instrumentality of any one of the foregoing, to the extent includible in gross income for federal income tax purposes.” 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. 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.

Tax Regulation 20 NYCRR 112.3(c)(1)(i)(b) provides that pensions and other retirement benefits (including but not limited to annuities, interest, and lump sum payments) paid to an employee of the United States, including its agencies, that are included in FAGI, relate to services performed as a public employee, and all or a portion of which are actually contributed to by the Federal Government, shall be subtracted from FAGI in determining the NYAGI of a resident individual. Accordingly, any distributions to Petitioner from the TSP account relating to Petitioner's federal employment that was funded by contributions from Petitioner and the Federal government are attributable to Petitioner's employment with the Federal government and will qualify for the subtraction modification under Tax Law § 612(c)(3)(ii) to the extent the distributions are included in Petitioner's FAGI.

Petitioner asks if distributions from an IRA funded exclusively with funds rolled over from the TSP will continue to qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). When Petitioner receives distributions from a rollover IRA account that was funded exclusively with TSP funds, only the portion of the distribution that represents the rollover contribution from the TSP will qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). See TSB-A-09(7)l; *cf. Matter of Kane*, Tax Appeals Tribunal, December 21, 2016. Therefore, if this portion of the distribution is included in Petitioner's FAGI when Petitioner computes NYAGI, it will qualify for the income subtraction modification. However, distributions of any gain or income earned from the rollover IRA will not be considered to be attributable to Petitioner's TSP and will not qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). *Id.* These latter distributions may be eligible for the \$20,000 subtraction modification provided by Tax Law § 612(c)(3-a) to the extent the other requirements of that provision are satisfied. See TSB-A-09(7)l; TSB-A-02(5)l.

Dated: April 24, 2024

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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.