



## **Advisory Opinion: TSB-A-24(14)I**

The Department of Taxation and Finance received a Petition for Advisory Opinion from [ REDACTED ] (“Petitioner”). Petitioner asks if distributions from Petitioner’s Federal Employees’ Retirement Thrift Savings Plan (“TSP”) attributable to contributions made by the Federal Government and Petitioner are allowed to be subtracted from federal adjusted gross income (“FAGI”) in determining New York adjusted gross income (“NYAGI”) under Tax Law § 612(c)(3)(ii) when Petitioner receives distributions, other than by a lump sum, from the TSP.

We conclude that Petitioner’s distributions, other than by a lump sum, from the TSP that were funded with contributions from Petitioner and the Federal Government qualify for the subtraction modification under Tax Law § 612(c)(3)(ii) to the extent the distributions are included in Petitioner’s FAGI.

### **Facts**

Petitioner is a retired federal employee and member of 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 the TSP. The 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). The TSP is a defined contribution plan as defined in IRC § 414(i). Individual accounts are established for each participating employee. The account may include contributions made by the account owner, 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. During Petitioner’s employment, he participated in the TSP. Contributions were made to Petitioner’s TSP account by Petitioner and by the Federal Government, Petitioner’s employer. Petitioner made all contributions on a pre-tax basis. Petitioner did not transfer any funds from another retirement account to the TSP account.

### **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(a) would constitute a pension within the meaning of Tax Law § 612(c)(3) and (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, or any agency of the United States, that are included in FAGI, relate to services performed as a public employee, and all or a portion of which are actually contributed 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 employment with the Federal Government that were 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 those distribution are included in Petitioner's FAGI.

Dated: April 24, 2024

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Brian McCann  
Principal Attorney

**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.