



Advisory Opinion: TSB-A-24(2)I

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether a payment he received from his former employer is tax-exempt retirement income.

We conclude that the payment is tax-exempt retirement income.

Facts

Petitioner was employed by the City University of New York (CUNY) between May 2014 and May 2015. He opted to enroll in the Optional Retirement Program (the “Program”), which is a qualified employee benefit plan. His individual account was administered and maintained by TIAA-CREF. Petitioner contributed a percentage of his salary each pay period to his account. The contributions were excluded from his federal adjusted gross income but were added back by Petitioner to compute his New York adjusted gross income for tax years 2014 and 2015. Petitioner ceased being an employee of CUNY before he could vest in the Program. In September 2018, Petitioner requested that CUNY return the contributions. CUNY thereafter returned the contributions with accumulated earnings to Petitioner.

Analysis

The New York taxable income of a resident individual is the individual’s New York adjusted gross income (NYAGI) less allowable New York deductions and New York exemptions. Tax Law § 611(a). The NYAGI of a resident individual is the individual’s federal adjusted gross income (FAGI) with certain modifications. Tax Law § 612. In general, pension payments to public employees may be eligible for tax-exempt treatment and may be subtracted from FAGI. Tax Law § 612(c)(3). Likewise, pension payments up to twenty-thousand dollars to non-public employees who have attained the age of fifty-nine and one-half may be eligible for tax-exempt treatment and may be subtracted from FAGI. Tax Law § 612(c)(3-a).

Under Tax Law § 612(c)(3) and 20 NYCRR 112.3(c)(1), pension and other retirement benefits paid to a public officer or public employee (or the beneficiary of a deceased public officer or employee) of New York State, its political subdivisions or agencies qualify if the benefits are included in federal gross income, relate to service performed as public officers or public employees, and all or a portion of the benefits are actually contributed to by New York State or its political subdivisions or agencies. 20 NYCRR 112.3(c)(1)(i)(a). In addition, distributions paid in a taxable year prior to retirement to public officers or public employees that represent a return of contributions to the applicable public retirement program will qualify for the exemption. 20 NYCRR 112.3(c)(1)(ii). Where a New York State employee leaves state service prior to vesting in the New York State Employee’s Retirement System, the contributions made by or on behalf of such employee, as well as any investment earnings thereon, qualify for the exemption and

should be subtracted in determining the employee's NYAGI. 20 NYCRR 112.3(c)(1)(iii), Example 2.

Here, Petitioner included the contributions to the Program in the computation of his NYAGI pursuant to Tax Law § 612(b)(26). Petitioner left CUNY service prior to vesting in the Program and received a payment representing a return of the contributions with accumulated earnings thereon. As set out in the regulations above, this payment qualifies for tax-exempt treatment. Therefore, the payment may be subtracted from federal adjusted gross income to compute petitioner's NYAGI.

Dated: April 18, 2024

/s/

Brian J. 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.