



Advisory Opinion: TSB-A-24(3)I

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], ("Petitioner"). Petitioner asks about the New York State ("NYS") tax consequences where a withdrawal is made from the New York City Superior Officers Council Annuity Trust Fund ("SOCA Fund") that contains a rollover from the Police Superior Officers' Variable Supplements Fund ("VSF") Deferred Retirement Option Plan ("VSF DROP Fund"); and the NYS taxation of a withdrawal from an Individual Retirement Account ("IRA") that contains a rollover from the SOCA Fund that contains a rollover from the VSF DROP Fund.

We conclude that SOCA Fund distributions that contain a rollover from the VSF DROP Fund qualify for the subtraction modification under Tax Law § 612(c)(3)(i) to the extent the distribution is included in Petitioner's federal adjusted gross income ("FAGI"). Also, a distribution from an IRA that contains a rollover from a SOCA Fund that contains a rollover from a VSF DROP Fund also will qualify for the subtraction modification under Tax Law § 612(c)(3)(i) to the extent the distribution is included in Petitioner's FAGI and represents a return of the SOCA Fund and VSF DROP Fund amounts rolled over. Any IRA distributions to Petitioner that are related either to employment in the private sector or represent gain or income earned on the amounts rolled over, do not qualify for the subtraction modification under Tax Law § 612(c)(3)(i) above, but may qualify for the \$20,000 subtraction modification under Tax Law § 612(c)(3-a) to the extent that the other IRA distributions are included in Petitioner's FAGI and otherwise meet the requirements of Tax Law § 612(c)(3-a).

Facts

Petitioner was employed with the NYC Police Department ("NYPD"). While employed, the City of NY made contributions on Petitioner's behalf to the SOCA Fund. The SOCA Fund is, according to Petitioner, an Internal Revenue Code ("IRC") § 401(a) plan funded solely by the City of New York.¹ Contributions to the SOCA Fund are made on behalf of active members of the Lieutenants' Benevolent Association ("LBA") and the Captains' Endowment Association ("CEA"). Distributions from the SOCA Fund have been determined to be amounts paid from a pension or other retirement plan of a subdivision of the State and are allowed to be subtracted from a taxpayer's New York adjusted gross income to the extent the funds are included in a taxpayer's FAGI.²

When Petitioner retired from the NYC Police Department, he rolled over his VSF DROP Fund into the SOCA Fund. The VSF³ is an annual benefit⁴ received by members of

¹ We assume for purposes of this opinion that the SOCA fund is a qualified retirement plan under IRC § 401(a).

² Department of Taxation & Finance Publication 36, General Information for Senior Citizens and Retired Persons, Page 12.

³ NYC Admin. Code § 13-279 as recodified in Chapter 907 of the laws of 1985.

⁴ The current annual VSF benefit for 2008 and every year thereafter is \$12,000.

the LBA and CEA who retire for service⁵ in addition to a member's regular pension payments. The VSF is solely funded by the City of New York, but not taxed by NYS.⁶ VSF payments, by statute, are not considered a pension or retirement system or fund⁷ and have been referred to by the Court of Appeals as "additional future compensation for services actually rendered".⁸ However, the NYS Legislature has specified that distributions from the VSF are exempt from tax.⁹

In 2002, the City of New York created the DROP Fund as an additional benefit within the VSF to allow NYC police to collect VSF benefits after 20 years of service while continuing to serve in the NYPD.¹⁰ Therefore, an LBA or CEA member who continues to work for the NYPD beyond 20 years receives a \$12,000 annual payment that is "banked." For example, if a member completes 25 years of service, he or she will have \$60,000 (\$12,000 x 5 years) of VSF DROP funds available to be paid on retirement. The member can choose to take a lump sum and be subject to federal taxes or the funds can be rolled over to a retirement plan.¹¹ According to Petitioner, the SOCA Fund does not permit contributions from members and only accepts rollovers from the VSF DROP Fund and rollovers from the NYC Police Pension Fund. *The Superior Officers['] Council Annuity Trust Fund Plan Document*, dated March 30, 2009 states in Article III, Section 3.4 that "the Plan may accept a contribution from a Participant in the form of a rollover distribution from any qualified [P]lan the payments from which are exempt from New York State income tax."

Analysis

In determining an individual taxpayer's New York taxable income, the starting point is FAGI, subject to the income modifications set forth in Tax Law § 612. Tax Law § 612(c)(3)(i) provides for a subtraction modification for pensions received by public officers and public employees of NYS, its subdivisions and agencies from New York taxable income. Under Tax Law § 612(c)(3)(i), to qualify for the subtraction modification the following two requirements set forth in 20 NYCRR 112.3(c)(1)(i) must be met: (1) the pension and other retirement benefits must relate to services performed as a public officer or public employee; and (2) all or a portion of the benefits are actually contributed by NYS, its political subdivisions or agencies.

As stated above, SOCA plan distributions have been held to meet the requirements of Tax Law § 612(c)(3)(i) and the regulations under 20 NYCRR 112.3(c)(1)(i) and are allowed to be subtracted in determining a taxpayer's New York tax liability to the extent the distribution is included in a taxpayer's FAGI.¹² In addition, distributions from the VSF Fund and the DROP Fund, although not considered "pensions or other retirement benefits" within the meaning of Tax Law § 612 (c)(3)(i), are exempt from New York tax by law.¹³ Therefore, we conclude that SOCA Fund distributions that contain a rollover from the VSF DROP Fund qualify for the subtraction modification under Tax Law § 612(c)(3)(i) to the extent the distribution is included in Petitioner's FAGI. Also, a distribution from an IRA that contains

⁵ This benefit does not apply to members who retire for ordinary or accidental disability.

⁶ Department of Taxation & Finance Publication 36, *supra*.

⁷ NYC Admin. Code § 13-279(b).

⁸ *Gagliardo v Dinkins* 89 N.Y.2d.62,74 (1996).

⁹ NYC Admin. Code § 13-264.

¹⁰ NYC Admin. Code § 13-281(e).

¹¹ https://www.nyc.gov/html/nvcppf/html/tier_3/tier_3_fund.shtml. We assume for purposes of this opinion that the DROP Fund is a qualified retirement plan under IRC § 401(a).

¹² Department of Taxation & Finance Publication 36, *supra*.

¹³ NYC Admin. Code § 13-264. We express no opinion whether distributions from these funds qualify for the subtraction modification in Tax Law § 612(c)(3) and 20 NYCRR 112.3(c)(1)(i).

a rollover from a SOCA Fund that contains a rollover from a VSF DROP Fund also will qualify for the subtraction modification under Tax Law § 612(c)(3)(i) to the extent the distribution is included in Petitioner's FAGI and represents a return of the SOCA Fund and VSF DROP Fund amounts rolled over. Any IRA and retirement plan distributions to Petitioner that are not related to rollovers from the SOCA Fund or DROP Fund, (e.g., employment in the private sector or gain or income earned on the amounts rolled over) do not qualify for the subtraction modification under Tax Law § 612(c)(3)(i) above, but may qualify, up to \$20,000, for the subtraction modification under Tax Law § 612(c)(3-a) to the extent that the other IRA distributions are included in Petitioner's FAGI and otherwise meet the requirements of that section.

Dated: April 18, 2024

/s/

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.