

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-86 (18) I
Income Tax
December 9, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1860730B

On July 30, 1986, a Petition for Advisory Opinion was received from the Transport Workers Union of Greater New York, 80 West End Avenue, New York, New York 10023.

The issue raised is the taxability for purposes of the personal income tax imposed under Article 22 of the Tax Law of pensions paid to employees of the Manhattan and Bronx Surface Transit Operating Authority.

The Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA) is a public benefit corporation and subsidiary of the Metropolitan Transportation Authority. Employees of MaBSTOA are public officers or public employees pursuant to the provisions of section 1265 of the Public Authorities Law.

Pensions paid to MaBSTOA's employees are not payable from any of the state or municipal retirement systems. Rather, pensions are paid pursuant to a labor agreement between Petitioner and MaBSTOA. Under the terms of this agreement, a pension board (made up of two members of Petitioner and three managerial representatives of the MTA) regulates this pension plan and generally follows civil service guidelines for pensions. However, New York State does not fund this pension plan.

Article XVI, § 5 of the Constitution of the State of New York provides as follows:

All salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions and agencies shall be subject to taxation.

Article V, § 7 of the Constitution of the State of New York provides as follows:

After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

These constitutional provisions are embodied in section 612(c)(3) of the Tax Law which exempts from the personal income tax imposed under Article 22 of the Tax Law "[p]ensions of officers and employees of this state, its subdivisions and agencies "

Section 116.3(c) of the regulations of the State Tax Commission further explains this exemption as follows:

The following items are to be subtracted from Federal adjusted gross income in computing the New York adjusted gross income of a resident individual:

* * *

(c) Pensions and other benefits...paid by a New York State or municipal retirement system to an officer or employee of New York State, its political subdivisions or agencies, or to the beneficiary of a deceased officer or employee, shall be subtracted in computing New York adjusted gross income. 20 NYCRR 116.3.

It follows from the foregoing that two conditions must be met in order for a pension payment to qualify for this exemption. First, it must be received by a former officer or employee of New York State or of one of its subdivisions or agencies. Second, the benefit must be payable from a state or municipal retirement system.

In the present instance, only the first of the two criteria is met. Accordingly, the pension payments paid by MaBSTOA do not qualify for exemption and are, therefore, subject to tax, except as discussed below.

It should be noted that section 1265.9(b) of the Public Authorities Law provides that a public benefit subsidiary corporation of the Metropolitan Transportation Authority may be a "participating employer" in the New York State Employees Retirement System with respect to one or more classes of officers and employees of such public benefit subsidiary corporation. MaBSTOA has not chosen to so act to bring its employees within the coverage of the Employees Retirement System. Rather, it has continued the MaBSTOA pension plan which is not a "New York State or municipal retirement system" within the meaning of regulation section 116.3(c). Edward Yule, Jr., Advisory Opinion of the State Tax Commission, March 18, 1981, TSB-H-81-(15)-I.

However, it should be noted that the pensions paid by MaBSTOA would qualify for the exemption provided by section 612(c)(3-a) of the Tax Law which exempts "[p]ensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subsection, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars, which are periodic payments

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attributable to personal services performed by such individual prior to his retirement from employment, which arise (i) from an employer-employee relationship or (ii) from contributions to a retirement plan which are deductible for federal income tax purposes."

DATED: December 9, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.