

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

TSB-A-86 (3) I
Income Tax
April 17, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I851022B

On October 22, 1985, a Petition for Advisory Opinion was received from Robert Vincent Smith, 451 Winter Street, Ext., Troy, New York 12180.

The issue raised is whether contributions to an Individual Retirement Account (IRA) made by a New York State resident will be subject to the personal income tax imposed under Article 22 of the Tax Law when withdrawn from the IRA if at the time of withdrawal the resident has changed his status and become a nonresident. Additionally, Petitioner asks whether income earned on such contributions will be taxable upon withdrawal.

Initially, it must be noted that contributions to IRA's and income earned on such contributions lose their individual character when withdrawn from the IRA and are, instead, simply characterized as distributions from an IRA. Richard W. Kaszubinski, State Tax Commission Advisory Opinion, TSB-A-84-(1)-I. Thus, for New York State and for federal purposes, earnings from an IRA will be treated in the same manner as the contributions to such IRA. Accordingly, any reference in this advisory opinion to distributions from an IRA is intended to include both contributions and income earned on such contributions.

Section 408(d) of the Internal Revenue Code provides in part, that "any amount paid or distributed out of an individual retirement account..., shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received."

Section 632(a) of the Tax Law provides, in part, that the "New York adjusted gross income of a nonresident individual shall be the sum of the following: (i) The net amount of items of income, gain, loss and deduction entering into his federal adjusted gross income..., derived from or connected with New York sources " Section 632(b) of the Tax Law provides, in part, that "items of income, gain, loss and deduction derived from or connected with New York sources shall be those items attributable to: ...a business, trade or profession or occupation carried on in this state

Inasmuch as contributions to an IRA allowed by section 219 of the Internal Revenue Code are contingent upon a taxpayer's employment in a business, trade, profession or occupation, the distributions from an IRA are deemed for purposes of section 632(b) of the Tax Law to be derived from or connected with a business, trade, profession or occupation.

Accordingly, distributions from the IRA of a nonresident will be subject to personal income tax under Article 22 of the Tax Law, but only to the extent that they are attributable to services performed within New York State. In this regard, regulation section 131.20 provides in part:

131.20 Pensions and other retirement benefits. If a pension or other retirement benefit does not qualify as an annuity under subdivision (d) of section 131.4 of this Part, and is attributable to services performed wholly within New York State, the entire amount included in the individual's Federal adjusted gross income is likewise includible in his New York adjusted gross income. If the pension or other retirement benefit is attributable to services performed wholly outside New York State, no part of the amount received is includible in the individual's New York adjusted gross income. Where the employee's services were performed partly within and partly without New York State, the amount includible in the individual's New York adjusted gross income is the proportion of the amount included in the individual's Federal adjusted gross income which the total compensation, received from the employer for the services performed in New York State during a period consisting of the portion of the taxable year prior to retirement and the three taxable years immediately preceding the retirement, bears to the total compensation received from the employer during such period for services performed both within and without New York State. For purposes of this section, the compensation for services performed within New York State must be determined separately for each taxable year or portion of a year in accordance with the applicable provisions of section 131.17, 131.18 or 131.19 of this Part. A determination of the portion of a pension or other form of deferred compensation attributable to New York State on the basis of a period of time greater than the period referred to above may be made if the individual establishes, to the satisfaction of the Tax Commission, the amount of his total yearly compensation for a longer period of time and the amount allocable to New York State in each year in accordance with the applicable provisions of section 131.17 through 131.19 of this Part. 20 NYCRR 131.20.

Distributions from IRA's do not qualify as annuities under subdivision (d) of section 131.4

Additionally, it should be noted that section 612(c)(3-a) of the Tax Law provides an exclusion to reduce a taxpayer's federal adjusted gross income by any amounts included in a taxpayer's gross income for federal purposes which consists of distributions from an IRA provided the taxpayer has attained the age of fifty-nine and one-half years. The amount of this exclusion may not exceed \$20,000 per year. Section 632(a)(2) provides that the exclusion allowed under section 612(c)(3-a) of the Tax Law is applicable to nonresidents. However, if IRA income is allocable as provided above, then the exclusion must be allocated using the same allocation basis. Technical Services Bureau Memorandum TSB-M-81-(19) Rev-I.

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Accordingly, Petitioner is subject to tax on the portion of his IRA distribution which is allocated to New York pursuant to the provisions of regulation section 131.20. However, if Petitioner has attained the age of fifty-nine and one-half, he is allowed an exclusion equal to the amount of his taxable IRA distribution up to a maximum of \$20,000 per year but on an allocated basis as provided above.

DATED: March 7, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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