

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

TSB-A-86 (8) I
Income Tax
June 2, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I860311B

On March 11, 1986, a Petition for Advisory Opinion was received from Dorothea M. Petersen, 41 St. Stephens Lane, Scotia, New York 12302.

The issue raised is whether support payments received by Petitioner from her ex-spouse qualify for the personal income tax pension and annuity exclusion provided pursuant to the provisions of section 612(c)(3-a) of the Tax Law.

Petitioner and her husband were divorced in or about 1971. Petitioner's judgement of divorce incorporated the terms and conditions of a written separation agreement between Petitioner and her husband which agreement provided that an amount equal to a specified portion of Petitioner's husband's pension is to be paid in equal monthly installments by Petitioner's husband to Petitioner as support payments.

Section 71 of the Internal Revenue Code provides that federal gross income includes amounts received as alimony or separate maintenance payments. The payments received by Petitioner fall with the definition of alimony or separate maintenance payments.

New York's personal income tax is based upon the federal personal income tax. Section 607 of the Tax Law provides that terms used in New York's personal income tax law shall have the same meaning as when used in a comparable context in the Internal Revenue Code. Section 612 of the Tax Law provides that the New York adjusted gross income of a resident individual equals his or her federal adjusted gross income with certain modifications.

Among those modifications is the modification provided by section 612(c)(3-a) which excludes from New York adjusted gross income "Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half., to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars, which are periodic payments 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."

Petitioner argues that her support payments should qualify for the pension and annuity exclusion since they are periodic payments attributable to personal services by Petitioner as a wife and mother. However, the support payments received by Petitioner are characterized for New York and federal tax purposes as alimony payments rather than pension or annuity payments. As such, they do not qualify for the pension and annuity exclusion. In any event, the support payments cannot qualify for the pension and annuity exclusion because they do not arise from an employer-employee

relationship (since Petitioner was her husband's spouse and not his employee) and do not arise from contributions to a retirement plan.

Accordingly, the support payments received by Petitioner must be included in Petitioner's federal and New York adjusted gross income but do not qualify for the pension and annuity exclusion provided by section 612(c)(3-a) of the Tax Law.

In her petition, Petitioner makes reference to New York's Equitable Distribution Law. It is noted that Petitioner's judgement of divorce predates the effective date of the Equitable Distribution Law. However, the conclusion reached in this Advisory Opinion would not be different if the Equitable Distribution Law were to apply to Petitioner.

DATED: June 2, 1986

s/FRANK J. PUCCIA
Director,
Technical Services Bureau

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