

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

TSB-A-92(1) I
Income Tax
April 20, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I920403A

On April 3, 1992, a Petition for Advisory Opinion was received from Niagara Falls Bridge Commission, The Rainbow Bridge, 5781 Falls Avenue, Niagara Falls, Ontario L2G 3K9.

The issue raised by Petitioner, Niagara Falls Bridge Commission, is whether interest paid to individual holders of certain bonds to be issued by Petitioner to finance improvements to and the maintenance of various highway bridges spanning the Niagara River will be subject to New York State and New York City personal income tax.

Petitioner was first established in 1938 by resolution¹ of the United States Congress to respond to the catastrophic destruction earlier that year of the Niagara Falls Bridge, connecting Niagara Falls, New York, with Niagara Falls, Ontario, by an ice jam. At the time no alternative crossing existed.

Faced with serious local economic impact, various business leaders from the Niagara Falls, New York, community sought government assistance. Because the collapsed bridge had spanned an international, navigable waterway, a Congressional response was required, even though the impact was principally a local concern. In June 1938 Congress passed the Resolution authorizing construction of a replacement bridge.

In addition to authorizing construction of a replacement bridge, the Resolution also organized Petitioner to oversee the project in order to expedite the response to the emergency. In doing so, Congress recognized the local character of the project by placing it under local control.

Under Section 7 of the Resolution, Petitioner is composed of eight members, four chosen by the Governor of New York State and four by Ontario authorities. Members of Petitioner are required to post a performance bond determined by the New York State Comptroller.

The Resolution requires that all revenues of Petitioner be used solely to pay the costs of operations and maintenance (including debt service on its obligations) and the costs of budget improvements. The Resolution provides that Canadian and U.S. properties of Petitioner will be distributed to their respective home jurisdictions upon dissolution of Petitioner.

Since the formation of Petitioner the federal government has not participated in, and pursuant to the Resolution, has no legal authority to participate in, the affairs or assets of Petitioner. Petitioner is not federally

¹pub. L. No. 117, 52 Stat. 767 (75th Congress, June 16, 1938), as amended (hereinafter referred to as the "Resolution").

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funded, nor is there any federal financial oversight of Petitioner's activities. Similarly, indebtedness of Petitioner is not indebtedness of the United States (Resolution, Section 9), and the indebtedness is not guaranteed by the federal government.

Reflecting its local character, significant federal laws governing federal entities such as the federal Freedom of Information Act (5 U.S.C. Section 552 et seq.), the Civil Service Laws (5 U.S.C. Section 2101 et seq.), the Merit Protection Board (5 U.S.C. Section 1201 et seq.) and the Hatch Act (18 U.S.C. Section 595) do not apply to Petitioner.

In contrast, Petitioner complies with certain New York State laws applicable to New York State public agencies. For example, Petitioner operates under New York State's Taylor Act (Civil Service Law Section 200 et seq.), and Petitioner employees who are United States Citizens belong to a union representing State employees, the Civil Service Employees Association.

Subsequent to 1938, the Resolution has been amended six times (e.g., to permit the purchase of two other bridges across the Niagara River, to enhance the Commission's borrowing powers). None of these amendments altered the governance of Petitioner by local public officials or gave the federal government any voice in Petitioner's affairs.

The most recent amendment to the Resolution underscores Petitioner's non-federal nature. Under the amendment, Petitioner is "deemed for purposes of all Federal law to be a public agency or public authority of the State of New York, notwithstanding any other provision of law." Pub. L. 102-240, § 1070(c), 105 Stat. 914(1991).

As a result of rapidly increasing traffic flows across the Niagara River bridge crossings, Petitioner has determined that significant bridge improvements are and will be needed to afford adequate vehicular capacity, with direct public benefit to communities in the immediate vicinity of Niagara Falls, New York, as well as to all traffic crossing the Niagara River from or to New York State. Therefore, a new bond issue is contemplated.

Section 103(a) of the Internal Revenue Code of 1986, as amended ("IRC"), states that "gross income does not include interest on any State or local bond." Section 103(c)(1) of the IRC provides, in turn, that the phrase "State or local bond" means "an obligation of a State or political subdivision thereof."

Since Petitioner's obligations are treated as obligations of a New York State public agency or New York State public authority, holders of obligations issued by Petitioner are not subject to federal personal income tax on interest paid by Petitioner.

With respect to residents of New York State, section 611(a) of the Tax Law provides that the New York taxable income of a resident individual is the individual's "New York adjusted gross income less his New York deduction and New York exemptions "

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Section 612(a) of the Tax Law, provides that the "New York adjusted gross income of a resident individual" means the individuals's "federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section." There are two relevant add modifications contained in section 612(b) of the Tax Law.

First, section 612(b) (1) of the Tax Law prescribes an addition modification described as follows:

"[i]nterest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by a compact or agreement to which this state is a party, to the extent not properly includible in federal adjusted gross income."

Second, section 612(b) (2) of the Tax Law prescribes an addition modification described as follows: "[i]nterest...income on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes."

Accordingly, interest income that is exempt for federal income tax purposes that is not required to be added to federal adjusted gross income pursuant to section 612(b) (1) and (2) of the Tax Law would also be exempt for New York State personal income tax purposes.

Section 1302(a) of the Tax Law provides that the New York City Personal Income Tax is imposed on the "city taxable income of every city resident individual". Pursuant to Section 1303 of the Tax Law, "The City taxable income of a city resident individual shall mean and be the same as his New York taxable income as defined in section [611] of this chapter..." In effect, under section 1303 of the Tax Law, the income base for the New York City Personal Income-Tax fully conforms to the New York State Personal Income tax. Where interest payments are exempt from the State tax, the interest payments are exempt from the City tax as well.

As described herein, Petitioner has been charged with the responsibility of improving and maintaining various bridges located in the immediate vicinity of Niagara Falls, New York. In this role, Petitioner carries out an essential government function similar to other New York bridge agencies, e.g. the Buffalo and Fort Erie Public Bridge Authority and the New York State Bridge Authority.

Members of Petitioner comprise appointees of the Governor of New York State, but no other State.

As a matter of federal law, Petitioner has been deemed a New York State public authority or public agency.

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Because of the clear absence of any direct relationship to any State other than New York State, the addition modification required by section 612(b)(1) of the Tax Law for interest paid on obligations of states other than New York State, or their political subdivisions, does not apply.

In addition, except for its creation, the federal government has played no role in the activities of Petitioner. The federal government does not participate in the appointment of members of Petitioner. The federal government does not fund petitioner, nor does it conduct financial oversight over the operations of Petitioner. The indebtedness of Petitioner is neither indebtedness of the federal government nor guaranteed by the federal government. Significant federal statutes applicable to the federal government do not apply to Petitioner.

Moreover, the federal government has explicitly declared in legislation that Petitioner is a New York State public agency or public authority, and has disclaimed any relationship to Petitioner.

In conclusion, because Petitioner is neither another State or political subdivision thereof within the meaning of section 612(b)(1) of the Tax Law, nor a federal authority, commission, or instrumentality within the meaning of section 612(b)(2) of the Tax Law, interest paid on obligations of Petitioner, which is exempt from federal income tax, also is exempt from the New York State and New York City Personal Income Taxes.

DATED: April 20, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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