

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

TSB-A-97(5) I
Income Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I970421A

On April 21, 1997, a Petition for Advisory Opinion was received from Marvin J. Weiss, 26 Sherwood Drive, Larchmont, New York 10538.

The issue raised by Petitioner, Marvin J. Weiss, is whether the "buyout" payments and the pension payments that he receives will qualify for exclusion, when he reaches age 59 1/2, under the pension and annuity rules contained in section 612(c)(3-a) of Article 22 of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner worked full time as a college professor until September 1996 when he accepted a "buyout". The terms of the "buyout" required that Petitioner officially resign from his tenured position, and that he would receive 50 percent of his salary for the next three years. Other than health coverage provided for retirees from the school, all other benefits ceased, including the school's contribution to Petitioner's Teachers Insurance and Annuity Association (TIAA) defined contribution pension plan (TIAA plan).

Petitioner continues to work for the school part time and is paid as a part-timer (adjunct). Petitioner is allowed to make voluntary contributions to his TIAA plan based on his adjunct wages, but the contributions are not matched by the school.

When Petitioner starts drawing from his TIAA plan, he plans to select the interest only option, rather than annuitizing the principal in his account. The interest only option will be paid on a periodic basis, and will only fluctuate if and when TIAA changes the interest rate.

Section 612(a) of the Tax Law defines New York adjusted gross income of a resident individual as the individual's federal adjusted gross income with certain modifications. Section 612(c)(3-a) of the Tax Law contains a modification for pension and annuity income, other than pensions and other retirement benefits paid to public officers and public employees of New York State, its political subdivisions or agencies or the federal government.

Section 612(c)(3-a) of the Tax Law and section 112.3(c)(2)(i) of the Personal Income Tax Regulations provide that pension and annuity income not in excess of \$20,000, received by an individual, may be subtracted in determining the individual's New York adjusted gross income providing the following conditions are met:

(a) the pension and annuity income must be included in federal adjusted gross income;

(b) the pension and annuity income must be received in periodic payments (except distributions from an individual retirement account [IRA] or self-employed retirement plan [Keogh]);

(c) the pension and annuity income must be attributable to personal services performed by such individual, prior to such individual's retirement from employment, which arises from either an employer-employee relationship or from contributions to a retirement plan which are tax deductible under the Internal Revenue Code ("IRC") (e.g., IRA or Keogh); and

(d) such individual receiving the pension and annuity income must be 59 and 1/2 years of age or over.

Section 607(a) of the Tax Law provides that any term used in Article 22 of the Tax Law shall have the same meaning as when used in a comparable context in the IRC, unless a different meaning is clearly required.

For federal income tax purposes severance and termination payments that are provided by the employer upon ending the employment relationship are generally viewed as taxable compensation under section 1.61-2(a)(1) of the Treasury Regulations (section 61(a)(1) of the IRC) and are reported with the employee's other salary and wages on the employee's federal income tax return. The employee receives a form W-2 for this income. Pension distributions are includible in gross income under section 1.61-11(a) of the Treasury Regulations (section 61(a)(11) of the IRC) and are reported as pension income on the employee's federal income tax return. The employee receives a form 1099-R for these distributions.

In this case, Petitioner accepted a "buyout" requiring that he officially resign from his tenured position and that he would receive 50 percent of his salary for the next three years. Petitioner continues to work for the college part-time. For federal income tax purposes, the "buyout" payments are characterized as wage compensation that is included with Petitioner's other salary and wages reported on Petitioner's W-2 issued by the college. Pursuant to the federal conformity treatment required by sections 607 (terms have the same meaning) and 612(a) (starting point is federal adjusted gross income) of the Tax Law, the "buyout" payments are also characterized as wages for New York State personal income tax purposes. Therefore, these payments do not qualify for the exclusion provided in section 612(c)(3-a) of the Tax Law for certain pension and annuity income.

With respect to Petitioner's pension income from his TIAA plan, if Petitioner selects the interest only option that is paid on a periodic basis fluctuating only when TIAA changes the interest rate, the pension payments Petitioner receives from his TIAA plan when he reaches age 59 1/2 will qualify for the subtraction provided in section 612(c)(3-a) of the Tax Law up to the \$20,000 maximum exclusion.

It should be noted that if Petitioner's pension income from his TIAA plan is attributable solely to employment as a public employee of New York State, its political subdivisions or agencies (for example, the State University of New York), then Petitioner's pension income, to the extent included in gross income for federal income tax purposes, would be excludable under section 612(c)(i) of the Tax Law for purposes of computing New York adjusted gross income. Section 612(c)(i) of the Tax Law contains a modification reducing federal adjusted gross income for pension and annuity income that is paid to public officers and public employees of New York State, its political subdivisions or agencies.

DATED: July 21, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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