NEW YORK STATE | Department of Taxation and Finance

Technical Memorandum
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Income Tax
October 11, 2017

Income Tax Relief for Individuals Affected by the Flooding of Lake Ontario and the St. Lawrence Seaway

Income tax relief is available to certain individuals whose primary residences were damaged by the flooding of Lake Ontario and the St. Lawrence Seaway. Individuals may take a subtraction modification when using a distribution from an eligible retirement plan to pay for repairs to their primary residences.

Chapters 85 and 61 of the Laws of 2017 provide for income tax relief to individuals whose primary residences were damaged by the flooding of Lake Ontario and the St. Lawrence Seaway in 2017. Taxpayers who use distributions from eligible retirement plans to pay for repairs to their primary residences may subtract those distributions when computing New York State adjusted gross income for tax years 2017 through 2022. See Tax Law § 612(c)(42).

Requirements for claiming the New York State subtraction modification

For a taxpayer to be eligible for income tax relief, all of the following requirements must be met:

- The taxpayer's primary residence must be located in the area affected by the disaster declared by Executive Order 165 of 2017. This area includes the counties of Cayuga, Jefferson, Monroe, Niagara, Orleans, Oswego, St. Lawrence, and Wayne.

- The taxpayer must have sustained damage to his or her primary residence due to coastal flooding, widespread erosion, and water damage ("the flood damage").

- The damage to the taxpayer's primary residence must qualify for a casualty loss deduction under Internal Revenue Code (IRC) § 165 (determined without regard to whether the loss exceeds 10% of the taxpayer's federal adjusted gross income).

- The taxpayer must take a distribution from an eligible retirement plan and use the distribution during the taxable year to pay for eligible repairs to his or her primary residence.

Qualifying as a casualty loss

To qualify for the New York State subtraction modification, the damage to the taxpayer's primary residence must qualify for the casualty loss itemized deduction under IRC § 165. However, the loss does not need to exceed 10% of federal adjusted gross income as required for the federal casualty loss deduction. The taxpayer does not need to claim the casualty loss itemized deduction on his or her federal or New York State tax return to claim the New York State subtraction modification.

See federal Form 4684, *Casualties and Thefts*, and its instructions, for more information about the federal casualty loss itemized deduction.

Eligible distributions

To qualify for the modification, a distribution must be from an eligible retirement plan on or after April 1, 2017, and before April 2, 2022, included in the taxpayer's federal adjusted gross income, and used to pay for repairs to a taxpayer's primary residence in the same tax year in which the distribution is taken.

An *eligible retirement plan* is one that is defined in IRC § 402(c)(8)(B) and includes the following:

- an individual retirement account (IRA) described in IRC § 408(a),
- an individual retirement annuity described in IRC § 408(b) (other than an endowment contract),
- a qualified trust, including a plan described in IRC § 401(k),
- an annuity plan described in IRC § 403(a),
- an eligible deferred compensation plan described in IRC § 457(b) that is maintained by an eligible employer described in § 457(e)(1)(A), and
- an annuity contract described in IRC § 403(b).

A taxpayer may claim the subtraction modification only for distributions received during his or her resident period in New York State. If a taxpayer moves out of New York State, he or she may not claim a subtraction modification for any distributions received as a nonresident of New York State.

Eligible repairs

The taxpayer may use the amount paid for repairs to calculate the subtraction modification when:

- the repairs are made and paid for during the tax year,
- the repairs are necessary to restore the primary residence to the condition it was in immediately before the flood,
- the amount spent for repairs is not excessive, and
- the repairs only correct the damage from the flood.

Claiming the subtraction modification

The subtraction modification is claimed on Form IT-225, *New York State Modifications*, for tax years 2017 through 2022, using subtraction modification number S-133, *Distributions from an eligible retirement plan for the Lake Ontario and St. Lawrence Seaway flood relief program*. The subtraction modification will be carried over from Form IT-225 to the taxpayer's Form IT-201, *Resident Income Tax Return*, or Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.

Calculating the subtraction modification

The amount of the subtraction modification is calculated for each tax year and is limited to the lesser of A or B:

A) The amount of any distribution taken on or after April 1, 2017, and before April 2, 2022, reduced by the following:

- any amount of the distribution for which the pension and annuity income exclusion was taken during the tax year under Tax Law § 612(c)(3-a), less any distribution received after age 59 ½ and taken prior to April 1, 2017, or on or after April 2, 2022, **and**

- the amount of any federal casualty loss itemized deduction attributable to the flood damage to an individual's primary residence.

B) The amount paid for eligible repairs during the tax year, reduced by the amount of any federal casualty loss itemized deduction attributable to the flood damage to an individual's primary residence.

If a taxpayer claims a federal casualty loss itemized deduction for one tax year and takes the subtraction modification for the same loss on his or her tax return for a subsequent tax year, the amount of the itemized deduction must be included in the calculation of the subtraction modification for the year taken. However, any casualty loss itemized deduction claimed for other expenses not related to the primary residence, such as vehicles and personal property, will not affect the subtraction modification for eligible repairs.

For additional information on calculating the subtraction modification, see the worksheets in the instructions for Form IT-225, *New York State Modifications*.

Example 1: *A taxpayer is single and over age 59 ½. She receives a distribution of $25,000 from her IRA in tax year 2018. She spends $22,000 for eligible repairs on her primary residence in tax year 2018. She excludes $20,000 of her pension and annuity income under Tax Law § 612(c)(3-a) on her 2018 New York State income tax return. If she meets all other qualifications, she may claim a subtraction modification of $5,000, because it is the lesser of:*

- *$5,000 (the distribution of $25,000 reduced by $20,000, the pension and annuity income exclusion)* ***or***
- *$22,000 (the cost of eligible repairs to her primary residence)*

Example 2: *A taxpayer is under age 59 ½ and receives a $40,000 distribution from his IRA in July of 2017. He claims a casualty loss itemized deduction of $30,000 related to flooding in the disaster zone on his 2017 federal income tax return. In tax year 2017, he pays $22,000 for eligible repairs to his primary residence. The casualty loss itemized deduction consists of $19,000 related to his primary residence and $11,000 for expenses related to personal property. If he meets all other qualifications, he may claim a subtraction modification of $3,000, because it is the lesser of:*

- *$21,000 (the distribution of $40,000 reduced by $19,000, the casualty loss itemized deduction attributable to his primary residence)* ***or***
- *$3,000 (the cost of eligible repairs to his primary residence of $22,000, reduced by $19,000, the casualty loss itemized deduction attributable to his primary residence).*

Records required to be kept to support the subtraction modification

Individuals should keep the following records to support the subtraction modification reported on their tax returns:

- bills or invoices for the repairs that were made;
- credit card or other receipts showing that the repair bills were paid;
- insurance claims relating to the flood;
- canceled, imaged, or substitute checks or any other proof of payment; and
- any other records (including the worksheets in the instructions for Form IT-225) to support the subtraction modification claimed on their tax returns.

These records should be kept for at least three years from the due date of the return (or the date the return was filed, if filed after the due date) or six years if the subtraction modification represents at least 25% of the income reported on the return.

Federal income tax consequences

There may be federal income tax consequences, including penalties, if a taxpayer takes a distribution from an eligible retirement plan. Taxpayers should consider seeking advice from a tax professional before taking a distribution. Visit the Internal Revenue Service website at www.irs.gov for federal tax information.

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.