

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

TSB-M-89 (9)I
Income Tax
November 6, 1989

Taxation of Federal Pensions

Chapter 664 of the Laws of 1989 amended the Tax Law and the Administrative Code of the City of New York to exempt federal pensions from New York State personal-income tax, New York City personal income tax and the Yonkers income tax surcharge. This legislation was enacted in response to the United States Supreme Court decision in Paul S. Davis v. Michigan Department of Treasury, which held that states such as New York that exempt pensions of their own employees from income taxes must provide a similar exemption to employees of the federal government. The new exemption also applies to the New York State and New York City separate taxes on lump sum distributions.

Chapter 664 amended sections 612(c)(3) of the Tax Law and 11-1712(c)(3) of the Administrative Code to allow a new subtraction from federal adjusted gross income to arrive at New York adjusted gross income. The subtraction is for the amount of pensions paid to officers or employees, or their beneficiaries, of the United States, any territory or possession or political subdivision of such territory or possession, the District of Columbia, or any agency or instrumentality of any of the foregoing (including the military), to the extent the pension payments were included in gross income for federal income tax purposes.

The new law applies to federal pension payments received on or after January 1, 1989. Therefore, New York State will not issue refunds for prior years even where the statute of limitations has not expired.

However, two pending New York Supreme Court cases may result in the state being required to issue refunds for prior years. Pending the outcome of this litigation, taxpayers have the right to file protective claims for refund for all open years on Form IT-113X. If a taxpayer's refund claim is denied, the taxpayer must file a petition with the Commissioner of Taxation and Finance in order to preserve his or her refund rights.