

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-15(1)I
Income Tax
March 19, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I130528A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asked whether his pension from the International Bank for Reconstruction and Development (“World Bank”) is subject to New York personal income taxation.

We conclude that the World Bank is not an instrumentality of the United States. Therefore, the taxpayer’s pension from that entity is not eligible for the subtraction modification in Tax Law § 612(c)(3)(ii).

Facts

Petitioner receives a pension from the World Bank. Petitioner asks whether the World Bank is an instrumentality of the United States, and that the pensions he receives from it are deductible from personal income taxation under the Tax Law.

Analysis

Section 612 of the Tax Law provides that the New York adjusted gross income (NYAGI) of a resident is the individual’s Federal adjusted gross income (FAGI) with the addition and subtraction modifications specified in Tax Law § 612. Pensions of officers and employees of the United States of America, any territory or possession or political subdivision of such territory or possession, the District of Columbia, or any agency or instrumentality of any one of the foregoing, to the extent includible in gross income for federal income tax purposes are subtracted from FAGI. *See* Tax Law § 612(c)(3)(ii); 20 NYCRR § 112.3(c)(1). In addition, up to \$20,000 of the FAGI income derived from pension and annuity distributions are eligible for the subtraction modification provided by Tax Law § 612(c)(3-a) if the following conditions are met: (1) the distributions are not subject to the subtraction modifications provided by Tax Law § 612(c)(3-a); (2) the taxpayer is at least 59 ½ years old; and (3) The distributions are “periodic payments attributable to personal services performed by such individual prior to his retirement from employment and which arise from an employer-employee relationship” Tax Law § 612(c)(3-a); *see also* 20 NYCRR § 112.3 (c)(2)(i)(a-d).

The determination of whether an entity is an instrumentality of the United States depends on the degree to which the entity is connected with the federal government. An entity will be

considered an instrumentality of the United States when it is “so closely connected to the Government that the two cannot realistically be viewed as separate entities.” *United States v. New Mexico*, 455 US 720 (1982).

The World Bank is an international, inter-governmental organization. It was created by the Articles of Agreement drawn up at a conference held in Bretton Woods, New Hampshire in 1944. The United States accepted membership in the World Bank pursuant to § 286 of Title 22 of the United States Code. The Bank is empowered to provide financial assistance for the development of member countries, to promote private foreign investment, to stimulate the balanced growth of international trade, and “to conduct its operations with due regard to the effect of international investment of business conditions in the territories of members.” Articles of Agreement (as amended Feb. 16, 1989), Art. I. Pursuant to 22 U.S.C. § 288 and Executive Order 9751 (issued July 11, 1946), the World Bank is designated a public international organization. Thus, the World Bank is an international entity in which the United States government participates as one of many member states. The United States government does not exercise control over the entity nor does the World Bank perform its functions on behalf of the United States.

Based on the foregoing, we conclude that the World Bank is not an instrumentality of the United States. Consequently, Petitioner’s pension is not eligible for the subtraction modification in Tax Law § 612(c)(3)(ii). However, Petitioner may be eligible for the subtraction modification of up to \$20,000 in Tax Law § 612(c)(3-a) if the conditions described in that paragraph are met.

DATED: March 19, 2015

/S/

DEBORAH R. LIEBMAN

Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.