

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

TSB-A-84 (1) I  
Income Tax  
October 8, 1984

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1820809A

On August 9, 1982, a Petition for Advisory Opinion was received from Richard W. Kaszubinski, 404 North Main Street, North Syracuse, New York 13212.

The issue raised is whether any portion of distributions from an Individual Retirement Account, the corpus of which is invested solely in New York or Puerto Rico municipal bonds and obligations, is subject to tax under the Personal Income Tax imposed by Article 22 of the Tax Law.

Section 612 of the Tax Law, contained in Article 22 thereof, provides that the New York adjusted gross income of a resident individual, the starting point in determining his New York taxable income, means his Federal adjusted gross income, with certain modifications.

Section 103 of the Internal Revenue Code excludes from Federal gross income, and thus from Federal adjusted gross income, "interest on . . . the obligations of a State, a territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia .... " Interest on bonds issued by the government of Puerto Rico or by its authority is similarly exempt. 48 U.S.C. § 745; 26 U.S.C. § 103(a), (m). However, Section 408(d) of the Internal Revenue Code provides that "any amount paid or distributed out of an individual retirement account . . . shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received." Thus, where the funds contributed to an I.R.A. are invested in municipal bonds the interest on which is ordinarily excluded from gross income under Section 103, such interest upon its exiting the I.R.A. loses its character as tax-exempt interest and takes its place, as ordinary income, in Federal gross income and adjusted gross income, and is thus subject to the Federal income tax. This is, the Code characterizes the distribution from the I.R.A. as a species of income different from exempt municipal bond interest, albeit without giving such income a distinct name. Section 607 of the Tax Law provides that terms used in Article 22 are to be given the same meaning "as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required." Thus, the Internal Revenue Code's exclusion of the income in question from the category of "interest" in effect means that it is not to be treated as interest for purposes of Article 22. Thus, in computing New York adjusted gross income, the modifications provided for in Tax Law, § 612(c)(6), which requires a subtraction from Federal adjusted gross income of "interest" income on obligations or securities to the extent exempt under New York law, and § 612(c)(i), which provides for a similar modification with respect to obligations of the United States and its possessions, are inapplicable.

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Petitioner next inquires as to the manner in which distributions from an IRA are to be reported for purposes of the New York Personal Income Tax. As indicated above, distributions from an IRA are included in Federal adjusted gross income and are therefore automatically included in New York adjusted gross income. However, section 612(c)(3-a) of the Tax Law provides for an exclusion of up to \$20,000, applicable to IRA distributions, except those which constitute lump sum distributions within the meaning of § 402(c)(4)(A) of the Internal Revenue Code and which are taxed under Tax Law, § 601-C (separate tax on the ordinary income portion of lump sum distributions).

DATED: April 16, 1984

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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