

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

TSB-A-09(7)I
Income Tax
July 13, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I081103B

In a Petition dated October 23, 2008, Petitioner, [REDACTED], asks whether, if she rolls over her Federal Reserve Bank of New York 401K Thrift Plan, whose distributions are not included in determining New York State taxable income, to an Individual Retirement Account (IRA), the subsequent distributions from the IRA will continue to be excluded in determining her New York taxable income.

We conclude that distributions that are attributable to Petitioner's FRBNY 401K Thrift Plan rollover contribution to her IRA are not included in her New York taxable income pursuant to §612(c)(3)(ii). However, any gain or income earned by the IRA rollover is included in Petitioner's New York taxable income to the extent it does not qualify for the \$20,000 income subtraction under Tax Law §612(c)(3-a).

Facts

Petitioner is 60 years old and recently retired from the Federal Reserve Bank of New York (FRBNY). Petitioner participated in the FRBNY 401K Thrift Plan, which is a qualified plan. Distributions from the FRBNY 401K Thrift Plan are not included in New York taxable income pursuant to Tax Law § 612(c)(3)(ii). Petitioner plans on rolling over the funds in the plan to a new IRA at another financial institution. The New IRA will be funded exclusively by the rollover funds from the FRBNY 401K Thrift Plan.

Analysis

Section 612 of the Tax Law provides that the New York adjusted gross income of a resident individual is the individual's federal adjusted gross income with the modifications specified in § 612. Tax Law § 612(c)(3)(ii) provides that pensions paid to 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 of the foregoing, to the extent includible in gross income for federal income tax purposes. Pensions and annuities that are not subject to the subtraction modifications provided for by § 612(c)(3) will be subtracted from federal adjusted gross income. Tax Law § 612(c)(3-a) provides that, for pensions and annuities that are not subject to the subtraction modifications provided by § 612(c)(3), a taxpayer who is 59 ½ or older may subtract from federal adjusted gross income up to \$20,000 of any of those pensions or annuities.

In Charles E. Rockey, Adv Op Comm T&F, June 1990, TSB-A-90(8)I, it was concluded that pension payments from the distributions from the Federal Reserve Retirement Plan administered by the Office of the Federal Reserve Employee Benefit System and subject to the direction and control of the Board of Governors and the federal reserve banks are pension payments paid to an employee of an instrumentality of the United States and therefore are exempt from tax pursuant to § 612(c)(3)(ii) of the Tax Law. Further, Albert Zelony, Adv Op Comm T&F, July 24, 2002, TSB-A-02(5)I, concluded that, when a taxpayer rolls over his or her New York State pension benefits to an IRA, the amount received from the pension fund represents a nontaxable distribution, and is not subject to New York personal income tax. Any subsequent distributions from the IRA will be exempt to the extent that they represent a return of principal attributable to the pension rollover. Any other amounts received will be subject to tax.

In this case, if Petitioner rolls over her FRBNY 401K Thrift Plan to an IRA, then as in Zelony, *supra*, when Petitioner receives distributions from the rollover IRA, only a portion of the distribution will be exempt. The portion of the distribution from the IRA that represents the rollover contribution from the FRBNY 401K

Thrift Plan is a return of the FRBNY 401K Thrift Plan contribution. If this portion is included in Petitioner's federal adjusted gross income when the Petitioner computes her New York adjusted gross, it will qualify for the income subtraction under Tax Law §612(c)(3)(ii).

With respect to distributions of any gain or income earned from the rollover IRA, the earnings are not attributable to Petitioner's retirement plan from FRBNY, and the interest or gain earned is not exempt from New York State taxation. Since Petitioner has reached the age of 59½, the balance of the distributions that do not represent a return of the FRBNY 401K Thrift Plan contribution in the rollover IRA may be subtracted in computing New York adjusted gross income, but only up to \$20,000. See Tax Law §612(c)(3-a) and 20 NYCRR 112.3(c)(2). Any amount of those contributions under \$20,000 should be added to any other pension and annuity income she may receive. The total, but not in excess of \$20,000, would be allowed as a subtraction modification from federal adjusted gross income when computing Petitioner's New York adjusted gross income. Any excess over \$20,000 would not be allowed as a subtraction from federal adjusted gross income when computing Petitioner's New York adjusted gross income.

When Petitioner receives a distribution from her rollover IRA, she must determine the portion of the distribution that is a return of the FRBNY 401K Thrift Plan contribution to the IRA and the portion that is attributable to any other contribution or to appreciation (if any) since the original rollover. These portions can be determined by multiplying the amount of the distribution by a fraction, the numerator of which is the FRBNY 401K Thrift Plan rollover contribution, and the denominator of which is the current value of the IRA before the distribution. The product is the amount that will qualify for the income subtraction modification under Tax Law §612(c)(3)(ii). As discussed above, the portion that does not qualify for the subtraction modification under Tax Law §612(c)(3)(ii) may qualify for the \$20,000 income subtraction under Tax Law § 612(c)(3-a). Further, the portion that is deemed to be a return of the FRBNY 401K Thrift Plan rollover contribution reduces the balance of the FRBNY 401K Thrift Plan rollover contribution in the IRA when Petitioner determines how to allocate any future distributions she receives.

Accordingly, pursuant to Tax Law §612(c)(3)(ii), Petitioner is allowed to subtract from federal adjusted gross income the portion of her rollover IRA distribution that is attributable to her FRBNY 401K Thrift Plan rollover contribution, provided that the distribution amount is included in her federal adjusted gross income. Further, any gain or income earned from the rollover IRA is included in determining Petitioner's New York taxable income to the extent the gain or income, when added to any other pension and annuity income she may have, exceeds the \$20,000 subtraction modification provided for in Tax Law §612(c)(3-a).

DATED: July 13, 2009

/S/
Jonathan Pessen
Director of Advisory Opinions
Office of 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.