

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

TSB-A-13(9)I
Income Tax
September 10, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I120821A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner, a New Jersey resident who was employed in New York State at the time of his disability, asks whether the long-term disability benefits he received in 2011 (and will be eligible to receive in subsequent years) are New York source income subject to New York State personal income taxes.

We conclude that Petitioner's long-term disability benefits are New York source income, and they will be subject to New York State personal income taxes if they are included in his federal adjusted gross income (FAGI).

Facts

At all times relevant to this opinion, Petitioner was a resident of New Jersey. From 1998 until March 2010, Petitioner worked for a corporation (Corporation) that had locations throughout the world, including New York City. Except for June 2007 through September 2008 when he was assigned abroad by his employer, Petitioner worked for Corporation in New York City. In March 2010, Petitioner suffered a stroke that resulted in visual, cognitive, and motor skill impairments to Petitioner and prevented his returning to work. Following the stroke, Petitioner collected short-term disability benefits from Corporation for six months. The benefits were treated on Petitioner's New York State income tax returns as New York source income. After the term of benefits under Corporation's short-term disability plan elapsed, Petitioner was eligible for and collected long-term disability benefits under a noncontributory disability insurance policy, which was certified on January 1, 2009. All the active full-time employees of Corporation were eligible to enroll in the policy plan when they were actively at work, and Petitioner enrolled while he was employed and actively working in New York State. Corporation paid all of the premiums for its employees who were covered by the long-term disability policy. If Petitioner is unable to return to work because of his impairments, he will be able to collect long-term disability benefits under the disability policy until January 2016. Thereafter, Petitioner will be eligible to collect full Corporation and Social Security retirement benefits.

Analysis

Petitioner asks whether the long-term disability benefits he received (and will be eligible to receive in subsequent years) under a noncontributory insurance policy are New York source income subject to New York State personal income taxes.

Generally, a nonresident of New York is subject to New York State personal income tax on his New York source income - defined as the sum of income, gain, loss, and deduction derived from or

connected with New York sources - that enters into his FAGI. *See* Tax Law § 631(a). The FAGI of a nonresident individual may be subject to the addition and subtraction modifications in Tax Law §§ 612(b) and 612(c), respectively, that relate to income derived from New York sources. *See* 20 NYCRR § 132.1(b).

The New York adjusted gross income (NYAGI) of a nonresident individual includes items of income, gain, loss and deduction entering into his FAGI that are attributable to a business, trade, profession or occupation carried on in New York State. *See* 20 NYCRR § 132.4(a). NYAGI includes compensation paid to a nonresident individual for personal services rendered within New York State if the compensation is included in the individual's FAGI. *See* 20 NYCRR § 132.4(b). If personal services are performed in New York State, the compensation for such services includible in FAGI constitutes New York source income, regardless of whether the compensation is received in a taxable year after the year in which the services were performed. *See* 20 NYCRR § 132.4(c). Thus, Petitioner's question has two elements: (1) whether the long-term disability payments are New York source income, and (2) if so, whether they will be subject to New York State personal income tax.

Petitioner enrolled in a long-term disability benefit plan when he was actively working for Corporation in New York. As such, the disability benefits are New York source income and they will be taxable income to Petitioner to the extent such benefits are included in his FAGI.

Generally, such disability benefits paid to an employee pursuant to such noncontributory insurance policy will not be included in an employee's federal gross income (and consequently an employee's FAGI) unless the amounts are attributable to contributions by the employer which were not includible in the gross income of the employee or were paid by the employer. *See* IRC § 104(a)(3); IRS Rev. Rul. 2004-55. Corporation paid all the premiums on Petitioner's behalf, but Petitioner's facts do not state whether or not the premium payments made by Corporation were includible in Petitioner's federal gross income. If the premium payments made by Corporation were not includible in Petitioner's federal gross income, then the amounts received for benefits under the noncontributory insurance policy will be included in Petitioner's federal gross income and flow through to his NYAGI, and as such, will be subject to New York State personal income taxes.

DATED: September 10, 2013

/S/

DEBORAH R. LIEBMAN
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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.