

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

TSB-A-15(3)I  
Income Tax  
May 12, 2015

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1130109A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] "Petitioner". Petitioner asks about the personal income tax consequences of a rollover in a direct trustee-to-trustee transfer from Petitioner's Internal Revenue Code §§ 401(a) and 403(b) tax-deferred annuities with the State University of New York Optional Retirement Plans (the "Existing Plans")<sup>1</sup> to an IRA.

We conclude that because the Existing Plans were funded with contributions from the State University of New York, which is a New York State public employer, distributions that are attributable to a rollover contribution to the new IRA from the Existing Plans are not included in New York taxable income pursuant to Tax Law § 612(c)(3)(i).

**Facts**

Petitioner is a retired employee of one of the colleges of the State University of New York. Petitioner is the beneficiary of the Existing Plans by virtue of his employment with SUNY. The Existing Plans are qualified plans characterized as tax-deferred annuities under §§ 401(a) and 403(b) of the Internal Revenue Code. Petitioner desires to rollover the Existing Plans, which are currently maintained by TIAA-CREF, to another financial institution that administers IRA accounts.

**Analysis**

An Internal Revenue Code § 403(b) plan, also known as a tax-sheltered annuity plan, is a retirement plan for certain employees of public schools, employees of certain other tax-exempt organizations and certain ministers. A § 403(b) plan allows employees to contribute some of their salary to the plan. The employer may also contribute to the plan for the employee. An Internal Revenue Code § 401(a) plan is used primarily by government employers. A § 401(a) plan is typically a custom-designed plan offered only to key employees as an added performance incentive. Both plans are intended to provide retirement income for employees.

Article 16, § 5 of the New York State Constitution provides that "all salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions and agencies, shall be subject to taxation." Tax Law § 612 provides that the New York adjusted gross income of a resident individual means the individual's federal adjusted gross income with the modifications specified in § 612. Tax Law § 612(c)(3)(i) provides that, to the extent includible in gross income for federal income tax purposes, pensions paid to officers and employees of New York State, its subdivisions, and agencies will be subtracted from an individual's federal adjusted gross income. Section 112.3(c)(1) of the New York State Personal Income Tax Regulations ("Regulations") provides that retirement benefits paid to a public officer will qualify for the

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<sup>1</sup> Although the Petition originally referred only to a 403(b) plan, Petitioner subsequently confirmed via email that the Existing Plans are §§ 403(b) and 401(a) plans.

exemption pursuant to Tax Law § 612(c)(3)(i) if the benefits relate to the services performed by the public officer and all or a portion are actually contributed (rather than merely being deemed contributed) by New York State. Tax Law § 612(c)(3-a) provides that, for pensions and annuities that are not subject to the subtraction modifications provided by Tax Law § 612(c)(3), a taxpayer who is at least 59 ½ may subtract from federal adjusted gross income up to \$20,000 of any of those pensions and annuities.

The Department has previously 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." *See* TSB-A-09(9)I. In that matter, it was concluded that any distributions from an IRA that were funded with rollover contributions from a New York State pension will be exempt pursuant to Tax Law § 612(c)(3)(i) to the extent that they represent a return of principal attributable to the pension rollover. Any other amounts received will be subject to tax. However, these distributions are eligible for the subtraction modification provided by Tax Law § 612(c)(3-a). *See also*, TSB-A-09(7)I; TSB-A-02(5)I.

In this case, because the Existing Plans were funded with contributions from the State University of New York, a New York State public employer, the portion of any distribution that is attributable to the rollover contribution to the new IRA is not included in New York taxable income pursuant to § 612(c)(3)(i). Therefore, when Petitioner receives a distribution from the new IRA, the portion of the distribution that is a return of the Existing Plans' rolled over contribution will qualify for the income subtraction modification determined according to the provisions of Tax Law § 612(c)(3)(i).

DATED: May 12, 2015

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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.