

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(3)I
Income Tax
April 22, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I150420B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], residing at [REDACTED]. Petitioner asks whether, as a nonresident of New York, he must include lump-sum distributions from a nonqualified deferred compensation plan as New York source income.

We conclude that a lump sum distribution from a nonqualified deferred compensation plan to Petitioner as a New York nonresident is not subject to New York State income tax pursuant to 4 U.S.C. § 114.

Facts

Petitioner worked for a New York employer (“Employer”) who offered a qualified retirement plan under IRC § 401(a). However, as an employee whose annual compensation exceeded the statutory limits under IRC § 401(a)(17), part of his retirement benefit accrued under a nonqualified deferred compensation plan, commonly known as an excess benefit plan (“Excess Benefit Plan”). Petitioner subsequently established residence outside New York State. At retirement, the Employer made a lump sum distribution from the Excess Benefit Plan to Petitioner, but withheld New York taxes pursuant to its policy that lump sum distributions from deferred compensation plans are subject to income tax in the state where the compensation was earned. Petitioner did not maintain a residence in New York at the time the lump sum distribution from the Excess Benefit Plan was made.

Analysis

Section 114 of Title 4 of the United States Code prohibits any state from imposing income tax on the retirement income of an individual who is not a resident or domiciliary of that state. 4 U.S.C. § 114(a). Included within the definition of retirement income subject to this prohibition is income from any plan, program, or arrangement described in IRC § 3121(v)(2)(C), which describes nonqualified deferred compensation plans, if such income is a payment received after termination of employment and under a plan, program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by IRC § 401(a)(17), *inter alia*. 4 U.S.C. § 114(b)(I); *see also* New York State Department of Taxation and Finance Publication 36, *General Information for Senior Citizens and Retired Persons* (3/15).

In this case, Petitioner received a lump sum distribution from a nonqualified plan described under 4 U.S.C. § 114 after establishing residency outside New York State. Petitioner

