

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

TSB-A-17(1)I
Income Tax
March 1, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO I160302A

The Department of Taxation and Finance (“Department”) received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether a lump sum distribution from a Federal Thrift Savings Plan (TSP) account will be exempt from New York State income tax.

We conclude that the lump sum distribution attributable to contributions made by Petitioner and his employer to his TSP account while he was a Federal employee will be exempt from New York State income tax if the amounts are included in Petitioner’s Federal adjusted gross income (FAGI).

Facts

Petitioner was employed by the United States Department of Justice, Federal Bureau of Prisons from June of 1993 until June of 2015. Petitioner had a TSP account and was a member of the Federal Employees’ Retirement System (FERS). Petitioner retired from employment at the age of 57 and has withdrawn his entire TSP balance in a lump sum payment.

Analysis

Tax Law § 612(c)(3)(ii) provides a subtraction modification for “pensions to officers and employees of the United States of America...or any agency or instrumentality of any one of the foregoing, to the extent includible in gross income for federal income tax purposes.” The TSP, established by 5 USC § 8437, is a retirement savings and investment plan. As a defined contribution plan, the TSP offers the same types of savings and benefits to Federal employees that many private corporations offer their employees under IRC § 401(k) plans, and it is treated for tax purposes as a trust under IRC § 401(a). *See* 5 USC § 8440. The account may include contributions made by the account owner and the account owner’s Federal employer, as well as the earnings associated with those contributions.

The term “pension” is not defined in Article 22 of the Tax Law. However, Tax Law § 607 provides that any term used in Article 22 shall have 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. Payments paid from a qualified pension plan within the meaning of IRC § 401 would constitute a “pension within the meaning of Tax Law §§ 612(c)(3)(ii) and 612(c)(3-a).” *See* TSB-A-94(1)(I) and TSB-A-01(1). Regulation 20 NYCRR 112.3(c)(1)(i)(b) provides that retirement benefits (including, but not limited, to annuities,

interest, and lump sum payments) that are included in FAGI related to services performed as public officers or public employees, all or a portion of which are actually contributed by the Federal government, shall be subtracted from FAGI in determining the New York adjusted gross income (NYAGI) of a resident individual. Accordingly, the lump sum distribution to Petitioner from his TSP account, which is attributable to Petitioner's employment with the United States Department of Justice, Federal Bureau of Prisons, or contributions to his TSP account made by his federal employer is considered part of Petitioner's pension and qualifies for the subtraction modification under Tax Law § 612(c)(3)(ii) to the extent it is included in Petitioner's FAGI. *See* TSB-A-94(I)I; TSB-A-15(6)I.

DATED: March 1, 2017

/S/

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.