

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioners filed three petitions with related issues. First, Petitioners ask whether a lump sum distribution from a Federal Thrift Savings Plan (“TSP”) attributable to contributions made by both the Federal government and Petitioners relating to Petitioners’ services as federal employees are eligible to be subtracted from federal adjusted gross income (“FAGI”) in determining New York adjusted gross income (“NYAGI”) under Tax Law § 612(c)(3)(ii). Secondly, Petitioners ask whether distributions from a TSP, other than by a lump sum distribution, are allowed to be subtracted from FAGI in determining NYAGI under Tax Law § 612(c)(3)(ii). Finally, Petitioners ask whether distributions from a rollover to an Individual Retirement Account (“IRA”) that was funded solely and exclusively with TSP funds contributed by the Federal government and by Petitioners relating to Petitioners’ services as federal employees, and contributed to the IRA after Petitioners’ retirement, may be subtracted from FAGI in determining NYAGI under Tax Law § 612(c)(3)(ii).

We conclude that lump sum distributions from the TSPs may be subtracted from Petitioners’ FAGI in determining NYAGI under Tax Law § 612(c)(3)(ii). Also, distributions from the TSPs to Petitioners other than by lump sum distribution may be subtracted from FAGI in determining NYAGI under Tax Law § 612(c)(3)(ii). Finally, distributions from Petitioners’ IRA that were funded with contributions from Petitioners’ TSP accounts qualify for the subtraction modification under Tax Law § 612(c)(3)(ii) to the extent that the distributions represent a return of the amount rolled over.

Facts

Petitioners are retired federal employees and members of the Federal Employees’ Retirement Service (FERS). FERS is a 3-part retirement package available to federal employees under which the employees are eligible after retirement for a basic annuity, Social Security and distributions from a TSP. A TSP, established by 5 USC § 8437, is a retirement savings and investment plan and is treated for tax purposes as a trust under IRC § 401(a). 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. *See* 5 USC § 8440. The account may include contributions made by the account owner and the account owner’s federal employer and the earnings associated with those contributions, as well as funds transferred to the TSP from an account owner’s nongovernmental retirement account and its associated earnings. *See* TSB-A-15(6)I. During Petitioners’ employment,

contributions were made to Petitioners' TSP accounts by Petitioners and the Federal government. Petitioners did not transfer any funds from a nongovernmental retirement account to the TSPs. Petitioners are retired and plan on making withdrawals from the TSPs. Subject to certain withdrawal rules, Petitioners have the option to withdraw from the TSPs in a single payment, monthly payments, a life annuity or in any combination of the three options.

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 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) and 612(c)(3-a). *See* TSB-A-94(1)(I) and TSB-A-01(1)(I).

Tax Regulation 20 NYCRR 112.3(c)(1)(i)(b) provides that pensions and other retirement benefits (including but not limited to annuities, interest, and lump sum payments) paid to an employee of the United States, including its agencies, that are included in FAGI, relate to services performed as a public employee, and all or a portion of which are actually contributed to by the Federal government, shall be subtracted from FAGI in determining the NYAGI of a resident individual. Accordingly, any distributions to Petitioners from their TSP accounts relating to their federal employment that were funded by contributions from Petitioners and the Federal government are attributable to Petitioners' employment with the Federal government and will qualify for the subtraction modification under Tax Law § 612(c)(3)(ii) to the extent the distributions are included in Petitioners' FAGI.

Finally, Petitioners ask if distributions from an IRA funded exclusively with funds rolled over from the TSPs will continue to qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). When Petitioners receive distributions from a rollover IRA account that was funded exclusively with TSP funds, only the portion of the distribution that represents the rollover contribution from the TSPs will qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). *See* TSB-A-09(7)I; *cf. Matter of Kane*, Tax Appeals Tribunal, December 21, 2016. Therefore, if this portion of the distribution is included in Petitioners' FAGI when Petitioners compute their NYAGI, it will qualify for the income subtraction modification. However, distributions of any gain or income earned from the rollover IRA will not be considered to be attributable to Petitioners' TSPs and will not qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). *Id.* These latter distributions may be eligible for the \$20,000 subtraction modification provided by Tax Law § 612(c)(3-a) to the

extent the other requirements of that provision are satisfied. *See* TSB-A-09(7)I; TSB-A-02(5)I.

DATED: September 29, 2020

/S/

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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.