

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]. Petitioner asks if distributions from an Individual Retirement Account (“IRA”) are allowed to be subtracted from federal adjusted gross income (“FAGI”) in determining New York adjusted gross income (“NYAGI”) under Tax Law § 612(c)(3)(ii) where Petitioner made contributions to a Federal Thrift Savings Plan (“TSP”) during his employment and, upon his retirement, the TSP funds are transferred to the IRA. Petitioner also asks whether, in addition to the subtraction modification in Tax Law § 612(c)(3)(ii) above, up to \$20,000 in distributions from an IRA or other retirement account relating to private employment will be allowed to be subtracted from FAGI pursuant to Tax Law § 612(c)(3-a).

We conclude that the distributions from Petitioner’s IRA that are funded with contributions from Petitioner’s TSP account 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. Other IRA and retirement plan distributions to Petitioner that either are related to employment in the private sector or represent gain or income earned on the rollover that do not qualify for the exclusion under Tax Law § 612(c)(3)(ii) may qualify for the \$20,000 subtraction modification under Tax Law § 612(c)(3-a) to the extent that the other IRA and retirement account distributions are included in Petitioner’s federal adjusted gross income (“FAGI”) and otherwise meet the requirements of Tax Law § 612(c)(3-a).

**Facts**

Prior to his retirement, Petitioner was employed by the Social Security Administration (“SSA”) and was a member 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 account from an account owner’s nongovernmental retirement account

and its associated earnings. *See* TSB-A-15(6)I. During Petitioner's employment with the SSA, contributions were made to Petitioner's TSP account by Petitioner and Petitioner's employer, SSA. Petitioner did not transfer to the TSP account any funds from a nongovernmental retirement account. Petitioner retired in 2017 and is receiving a pension from FERS. Petitioner is considering funding an IRA using the funds in his TSP account. Petitioner also indicates he has other IRA and retirement accounts funded from private employment funds he will draw upon in retirement.

## 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, or any agency of the United States, that are included in FAGI, relate to services performed as a public employee, and all or a portion of which are actually contributed by the Federal government, shall be subtracted from FAGI in determining the NYAGI of a resident individual. Accordingly, any distributions to Petitioner from his TSP account relating to his employment at SSA that were funded by contributions from Petitioner and SSA are attributable to Petitioner's employment with the Federal government and will qualify for the subtraction modification under Tax Law § 612(c)(3)(ii) to the extent those distribution are included in Petitioner's FAGI.

Upon retirement, Petitioner may fund an IRA exclusively with funds rolled over from his TSP account and asks whether distributions from the IRA will continue to qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). When Petitioner receives a distribution from the rollover IRA, only the portion of the distribution that represents the rollover contribution from the TSP 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 petitioner's FAGI when Petitioner computes his 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 Petitioner's TSP, and will not qualify for the subtraction modification under Tax Law § 612(c)(3)(ii). Id. These latter distributions and any distributions from other IRA or retirement accounts funded from private employment 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: October 6, 2020

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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.