

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-88 (4) I
Income Tax
April 12, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I880318A

On March 18, 1988, a Petition for Advisory Opinion was received from Richard C. Spaulding, 113 Murray Avenue, Delmar, New York 12054.

The issue raised is the applicability, for purposes of the personal income tax imposed under Article 22 of the Tax Law, of the \$20,000 pension and annuity exclusion under section 612(c)(3-a) of the Tax Law to distributions received by a retired employee of New York State from the New York State Deferred Compensation Plan.

Petitioner is sixty-one years of age and a retired employee of the State of New York. During his employment with the State of New York, Petitioner opted to defer a portion of his salary pursuant to the provisions of Internal Revenue Code section 457 which provides for "Deferred Compensation Plans With Respect To Service For State And Local Governments." Upon retirement, Petitioner opted to receive the distributions of his deferred compensation annually over a period of nine years commencing on September 30, 1987. The company responsible for administering the New York State Deferred Compensation Plan referred to Petitioner's first distribution payment as an "annuity payment."

Internal Revenue Code section 457(a) provides that [i]n the case of a participant in a eligible State deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary."

Chapter 306 of the Laws of 1985 amended the New York Tax Law to provide that amounts deferred under State deferred compensation plans will receive the same treatment for New York State personal income tax purposes as such amounts receive for federal income tax purposes under section 457 of the Internal Revenue Code. Technical Services Bureau Memorandum TSB-M-85-(16)I.

Federal regulation 1.457-1(d)(3) provides, in part: "Amounts deferred. 'Amount(s) deferred' under an eligible plan means compensation deferred under the plan, plus income attributable to compensation so deferred. Income attributable to compensation deferred under an eligible plan includes gain from the disposition of property." 26 CFR 1.457-1.

In addition, Federal regulation 35.3405-1, A-23 makes clear that distributions from a state deferred compensation plan are treated as wages for federal income tax purposes and do not qualify as pensions or annuities. See also Rev.

Rul. 82-46, 1982-1 CB 158. Such distributions must also be characterized as wages for New York State personal income tax purposes, as well. Tax Law section 607. Accordingly, such distributions do not qualify as pensions or annuities for New York State personal income tax purposes notwithstanding any characterization of them as such by Petitioner or by the company responsible for administering the New York State Deferred Compensation Plan.

Section 612(c)(3-a) of the Tax Law provides a modification reducing federal adjusted gross income in computing New York adjusted gross income for:

(3-a) Pensions and annuities received by an individual who has attained the age of fifty-nine and one-half, not otherwise excluded pursuant to paragraph three of this subsection, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars, which are periodic payments attributable to personal services performed by such individual prior to his retirement from employment which arise (i) from an employer-employee relationship or (ii) from contributions to a retirement plan which are deductible for federal income tax purposes.

Section 612(c)(3-a) also provides a modification for distributions from certain individual retirement accounts or individual retirement annuities as defined in section 408 of the Internal Revenue Code and from self employed individual and owner-employee retirement plans which qualify under section 401 of the Internal Revenue Code.

Distributions from the New York State Deferred Compensation Plan are treated as wages for federal and state income tax purposes. Therefore, they do not qualify as pensions or annuities and do not qualify for the modification provided by Tax Law section 612(c)(3-a) which is expressly limited in its application to pensions and annuities, IRA's and self-employed individual and owner-employee retirement plans.

Accordingly, distributions from the New York State Deferred Compensation Plan are included in Petitioner's federal adjusted gross income by operation of section 457 of the Internal Revenue Code and are included in Petitioner's New York adjusted gross income by operation of section 612(a) of the Tax Law.

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Petitioner may not reduce his New York adjusted gross income by his distribution from the New York Deferred Compensation Plan because such distribution is characterized for federal and state income tax purposes as wages and wages do not qualify for the section 612(c)(3-a) modification.

DATED: April 12, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.