

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

TSB-A-92(3) I
Income Tax
June 11, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I920319A

On March 19, 1992, a Petition for Advisory Opinion was received from Gordon H. Tresch, 208 Willowgrove South, Tonawanda, New York 14150.

The issue raised by Petitioner, Gordon H. Tresch, is whether for New York State personal income tax purposes distributions from a deferred compensation plan attributable to contributions made into the plan that were taxed in the year of contribution are taxable in the year of distribution.

Petitioner participated in a deferred compensation plan as a public employee, namely Town Clerk of the Town of Tonawanda, New York, beginning in the year 1984. For 1984, Petitioner's \$?,500 deferred compensation contribution was excludible from federal adjusted gross income but was taxable for New York State personal income tax purposes pursuant to section 612(b)(26) of the Tax Law.

Petitioner retired in 1991 and began to accept distributions from the deferred compensation plan in the amount of \$8,000 per year.

Section 612 of the Tax Law defines New York adjusted gross income as a resident individual's federal adjusted gross income modified as required by section 612.

Chapter 547 of the Laws of 1982 amended the New York State Finance Law to provide for the implementation of deferred compensation plans for public employees of New York State and its political subdivisions. Chapter 547 also added sections 612(b)(26) and 612(c)(27) to the New York State Tax Law. Section 612(b)(26) required participants to add to their federal adjusted gross income the amount deferred under the plan during the taxable year. Section 612(c)(27) permitted participants who properly included a distribution from the plan in their federal adjusted gross income to subtract the part of the distribution that was previously included in total New York income under section 612(b)(26). A participant in the plan, therefore, received a tax benefit only for federal income tax purposes.

Chapter 306 of the Laws of 1985 amended the Tax Law to allow public employees, who participate in deferred compensation plans, a tax benefit for purposes of the New York State personal income tax by repealing the above addition and subtraction modifications for taxable years beginning after December 31, 1984. Therefore, contributions to the plans that are excludible from federal adjusted gross income are also excludible from New York adjusted gross income and distributions from the plans that are includible in federal adjusted gross income are also includible in New York adjusted gross income.

However, to the extent that a taxpayer made a contribution, during 1984, to a deferred compensation plan established under section five of the State Finance Law and the taxpayer added the amount of such contribution to the

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taxpayer's federal adjusted gross income for 1984 pursuant to the add modification contained in section 612(b)(26) of the Tax law, the taxpayer may, to avoid double taxation of such income, subtract from the taxpayer's federal adjusted gross income for the taxable year in which a distribution is made from the plan, that portion of the distribution that was previously included in total New York adjusted gross income pursuant to section 612(b)(26) of the Tax Law.

Herein, in taxable year 1984, Petitioner made a contribution of \$7,500 into a deferred compensation plan established pursuant to section five of the State Finance Law. For taxable year 1984, Petitioner added the amount of his contribution to his federal adjusted gross income pursuant to section 612(b)(26) of the Tax Law in computing New York adjusted gross income.

In 1991, Petitioner received a distribution of \$8,000 from such plan. Accordingly, to avoid double taxation of such income, Petitioner may, when computing New York adjusted gross income for 1991, subtract from his federal adjusted gross income, \$7,500 of the distribution from the deferred compensation plan which is the portion of the distribution that was included in the Petitioner's New York adjusted gross income in 1984 pursuant to section 612(b)(26) of the Tax Law.

DATED: June 11, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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