

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

TSB-H-80 (523)I
Income Tax
February 2, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. 1800630B

On June 30, 1980 a Petition for Advisory Opinion was received from Joseph W. Martiney, 549 Woolworth Building, Watertown, New York 13601.

The issue raised is the tax treatment, under the Personal Income Tax, of distributions from an Individual Retirement Account established by means of a tax-free rollover of amounts received in the form of a pension from the State of New York or a subdivision or agency thereof. The Internal Revenue Code permits such tax-free rollovers of certain payments made from a qualified trust to an employee, or an employee's beneficiary, which are transferred to an eligible retirement plan such as an Individual Retirement Account. 26 U.S.C.A. §402(a)(5).

Article 16, §5 of the New York State Constitution provides that "All salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions and agencies shall be subject to taxation." Thus, the receipt of a distribution from a qualified trust which constitutes such a pension is not subject to tax under the Personal Income Tax. The act of "rolling over" the pension into an Individual Retirement Account is not itself a taxable event, and a subsequent distribution from such an account would represent a nontaxable return of principal to the extent that the distribution represented a return of funds "rolled over" into the account. To the extent that the distribution represented interest, or any other type of gain, earned in the account such portion would be subject to tax.

DATED: November 24, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau