

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

TSB-A-81(5)S
Sales Tax
August 7, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. Z810506C

On May 6, 1981, a Petition for Advisory Opinion was received from Robert T. McLaughlin, 24 Goodrich Street, Williston Park, New York 11596.

The issues raised are:

1) whether Petitioner, who receives a pension from the New York City Police Department, is subject to the motor fuel tax imposed under Article 12-A of the Tax Law on his purchases of gasoline and other motor fuels;

2) whether Petitioner is subject to the sales and use taxes imposed under Article 28 of the Tax Law;

3) whether recipients of Social Security disability benefits are exempt from the motor fuel taxes imposed under Article 12-A of the Tax Law and the sales and use taxes imposed under Article 28 of the Tax Law.

Petitioner avers that he is the recipient of a New York City police pension granted in lieu of workmen's compensation for personal injuries or sickness incurred in the course of employment, and that such pension is exempt from Federal, state and city personal income taxes.

Section 104(a) of the Internal Revenue Code and Section 1.104-1(d) of the federal income tax regulations (26 CFR 1.104-1(b)) exclude from federal gross income, among other things, amounts received under workmen's compensation acts or under a statute in the nature of a workmen's compensation act which provides compensation to employees for personal injury or sickness incurred in the course of employment.

Sections 282-a, 282-b, 282-c, 284, 284-a, 284-b and 284-c of the Tax Law, contained in Article 12-A, impose excise taxes on motor fuels and diesel motor fuels.

Section 1105 of the Tax Law imposes a tax upon the receipts from every retail sale of tangible personal property, the receipts from every sale, other than sales for resale, of certain energy sources, certain communications and certain energy and communication services and the receipts from certain specified services.

Section 104 of the Internal Revenue Code provides no exemption or exclusion from the motor fuel or diesel motor fuel taxes imposed under Article 12-A of the Tax Law or the sales tax imposed under Section 1105 of the Tax Law, with respect to amounts received as pensions in lieu of workmen's compensation.

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No other provision of Law provides an exemption or exclusion from the motor fuel and diesel motor fuel taxes imposed under Article 12-A of the Tax Law or the sales tax imposed under Section 1105 of the Tax Law, with respect to amounts received as pensions in lieu of workmen's compensation.

Similarly, no provision of law provides an exemption or exclusion from the motor fuel and diesel motor fuel taxes imposed under Article 12-A of the Tax Law or the sales tax imposed under section 1105 of the Tax Law, with respect to recipients of Social Security disability benefits.

Accordingly, Petitioner is advised that recipients of pensions granted in lieu of workmen's compensation and recipients of Social Security disability benefits are not exempt from the motor fuel taxes imposed under Article 12-A of the Tax Law or the sales tax imposed under Article 28 of the Tax Law, merely by virtue of their status as recipients of such pensions or such benefits.

DATED: July 21, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau