

**New York Personal Income Tax Treatment of Pension Payments Received
Under the Metropolitan Transportation Authority's
Police 20-Year Retirement Program**

The New York State Tax Department periodically receives inquiries regarding New York's personal income tax treatment of certain pension income. This memorandum sets forth New York's personal income tax treatment of pension income received by members of the Metropolitan Transportation Authority's (MTA) Police 20-Year Retirement Program. As explained in detail in the paragraphs that follow, members of the MTA's Police 20-Year Retirement Program can subtract their pension distributions in determining New York adjusted gross income to the extent that the distributions are included in the member's federal adjusted gross income.

The starting point in determining an individual's New York adjusted gross income is federal adjusted gross income, subject to the modifications set forth in Tax Law section 612.¹ Tax Law section 612(c)(3)(i) provides for the subtraction of pensions to officers and employees of this state, its subdivisions, and agencies, to the extent included in gross income for federal income tax purposes. Additionally, to qualify for the subtraction allowed under Tax Law section 612(c)(3)(i), the pension must relate to services performed as a public officer or employee and all or a portion of the pension must actually be contributed to by New York State, its political subdivisions, or agencies (20 NYCRR 112.3(c)(1)(i)). As such, for the MTA's Police 20-Year Retirement Program to qualify for the subtraction under Tax Law section 612(c)(3)(i), the recipient must be an officer or employee of one of the above three mentioned types of entities and the contributions to the retirement program must be made in whole or in part by the state, its subdivisions, or agencies.

Public Authorities Law sections 1263 and 1264 establish that the MTA is a public benefit corporation which performs an essential governmental function. As such, employees of the MTA and its subsidiaries are public employees² eligible for the subtraction modification allowed under Tax Law section 612(c)(3)(i). Therefore, as the recipients of the MTA's Police 20-Year

¹ § 612(a) of the Tax Law states that "New York adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year, with modifications specified in this section."

²See, In the Matter of the Petition of Jay G. and Dorothy Langlan, TSB-D-97(52)I (N.Y. Tax Appeals Tribunal September 4, 1997) stating that an employee of an MTA subsidiary is a public employee.

Retirement Program are retired employees of the MTA or its subsidiaries, the requirement of Tax Law section 612(c)(3)(i), that a taxpayer must have been an officer or an employee of the State, its subdivisions, or agencies to qualify for the income subtraction, is satisfied.

However, to further qualify for the subtraction allowed under Tax Law section 612(c)(3)(i), the State, its subdivisions, or agencies must have contributed to the retirement fund in whole or in part (See, 20 NYCRR 112.3(c)(1)(i)). Contributions to the MTA's Police 20-Year Retirement Program are prescribed pursuant to Public Authorities Law section 1266-h(4) which provides in part that the retirement plan shall comply with Retirement and Social Security Law section 389. Retirement and Social Security Law section 389(h) states that contributions to the retirement fund are to be picked up by the employer and shall be treated as employer contributions. Thus, the Police 20-Year Retirement Program also meets the employer contribution requirement of Tax Law section 612(c)(3)(i). Further, employees of the MTA's Police 20-Year Retirement Program are eligible for the income subtraction under Tax Law section 612(c)(3)(i) regardless of the fact that the pension is paid from a private fund and not from a state or municipal retirement system.³

Accordingly, both requirements necessary to qualify for the income subtraction under Tax Law section 612(c)(3)(i) are satisfied and members of the MTA's Police 20-Year Retirement Program can subtract their pension distributions in determining New York adjusted gross income to the extent that the distributions are included in the member's federal adjusted gross income.

³ In the Matter of the Petition of Jay G. and Dorothy Langlan *ibid.*, page 1