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

TSB-M-81(19)Rev. I
Income Tax
June 21, 1982

This memorandum supercedes memorandum TSB-M-81-(19)-I dated December 31, 1981, which should be destroyed.

## 1981 Legislation

## Pension and Annuity Exclusion

Chapter 103 of the Laws of 1981, enacted May 15, 1981, adds section 612(c)(3-a) to Article 22 of the New York State Tax Law and section T46-112.0(c)(3-a) to the Administrative Code of the City of New York. These added sections take effect for taxable years beginning on and after January 1, 1982.

Chapter 1043 of the Laws of 1981, enacted on November 11, 1981, amended sections 612(c)(3-a) and T46-112.0(c)(3-a).

These amendments provide for the exclusion of up to $20,000 of pension and annuity income received by an individual 59½ years of age and over Pension or annuity income received by an individual before the age of 59½ does not qualify for the exclusion. To qualify for the exclusion, this pension and annuity income must be included in federal adjusted gross income. It must also be attributable to personal services performed by such individual prior to his or her retirement as an employee or from contributions to a retirement plan which are deductible for federal income tax purposes.

Pensions and annuities, other than distributions from IRA's or Keogh's, must be received in periodic payments to qualify for this exclusion.

Distributions from a self-employed retirement plan (Keogh) may qualify for the exclusion. Keogh distributions received as periodic payments will qualify. An exclusion will also be allowed for lump sum distributions from a Keogh plan unless the federal special 10 year averaging method is elected for such distribution.

Distributions from IRA's [Individual Retirement Accounts as defined in Internal Revenue Code section 408] will qualify for the exclusion whether received as a lump sum distribution or periodic payments.

A pension or other retirement benefit, received by a nonresident which qualifies as an annuity as described under New York Stage Income Tax Regulations section 20 NYCRR 131.4(d), is not taxable to New York. Accordingly, the exclusion provision would not apply.

Where a pension or other retirement benefit does not constitute an annuity, it is compensation for personal services and, if the individual receiving it is a nonresident, it is taxable to the extent that the services were performed in New York State. If the pension or other retirement benefit income is allocable, then the exclusion must be allocated using the same allocation basis.

When a change of residence occurs, each qualifying taxpayer is entitled to deduct up to and including $20,000 for each period under section 654(b) of Article 22 of the New York State Tax Law.

When a payment to a beneficiary of aa estate or trust, which was created by a decedent, qualifies as a pension or annuity, such payment will be treated as meeting the definition of "pensions and annuities". If the decedent was 59½ years of age or over and was qualified to receive a pension or annuity at the time of his death, then the beneficiary, will be allowed the same exclusion that the decedent would have been entitled to.

Where a husband and wife each receives a pension or annuity and each qualifies for the exclusion, each must compute his or her exclusion as if separate federal returns were filed. The combined exclusion may not exceed $20,000 for each spouse.

Officers and employees of New York State, its subdivisions and agencies will still exclude the total amount of pension income included in Federal adjusted gross income as described under section 612(c)(3) of Article 22 of the New York State Tax Law. Consequently, the relief provisions of this Act do not apply in this instance. However, if in addition to his New York State employee pension, a public employee establishes a separate Individual Retirement Account in accordance with the U.S. Internal Revenue Code, the receipt of an annuity from the IRA account would qualify for these relief provisions.