

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

TSB-M-82- (3)-I (Rev.)
Income Tax
December 21, 1983

This Memorandum supersedes Memorandum numbered TSB-M-82-(3)-I dated April 27, 1982, which should be destroyed.

Computation of Section 612(c)(12) Modification for Professional Service Corporation (P.C.) Shareholder

Inquiries have been made concerning how a shareholder of a professional service corporation should compute the subtraction modification under section 612(c)(12) of the New York State Tax Law.

Under section 612(b)(7) of the New York State Tax Law, as amended by Chapters 358 and 1043 of the Laws of 1981, a shareholder of a professional service corporation is required to add to his federal adjusted gross income the excess of the amount deductible by the corporation as a contribution to certain employee plans for pensions, profit sharing, annuity and bond purchase, over the lesser of \$15,000 or 15% of the earned income derived by such shareholder from such corporation.

Under section 612(c)(12) of the New York State Tax Law, a shareholder of a professional service corporation is permitted to subtract from federal adjusted gross income amounts necessary to prevent taxation of amounts previously included in income under section 612(b)(7) of the New York State Tax Law.

When the shareholder begins receiving retirement benefits, the section 612(c)(12) modification will be made in the following manner:

If the total aggregate amount of the addback modification under section 612(b)(7) can be recovered in 3 years, the payments received by the shareholder can be subtracted from federal adjusted gross income until the entire aggregate amount of addback previously taxed is recovered.

If the total aggregate amount of the addback modification under section 612(b)(7) cannot be recovered within 3 years, the following formula will be used:

$$\frac{\text{Aggregate amount added back}}{\text{Expected return under the contract}} \quad \times$$

$$\text{The amount received under the contract} \quad =$$

$$\text{The amount to be excluded in arriving at New York adjusted gross income. (612(c)(12) modification)}$$

Definition of terms:

1. Aggregate amount added back is the amount previously included in New York adjusted gross income because of the 612(b)(7) modification. This amount is reduced by any amounts which were previously subtracted from New York income under section 612(c)(12) prior to the use of the formula.
2. Expected return under the contract is computed as of the date payments commence and includes all amounts contributed plus amounts earned on the account (as defined under Internal Revenue Code section 72(c)(3)). This amount must be reduced by all amounts previously received under the contract prior to the use of the formula.
3. The amount received under the contract means the amounts received by the shareholder for the current taxable year.
4. The amount to be excluded in arriving at New York adjusted gross income is the section 612(c)(12) modification for the current taxable year.

The provisions of this memo also apply to section T46-112.0(c)(12) of the Administrative Code of the City of New York.

This memorandum should be used in conjunction with TSB-M-80-(8)-I, dated December 10, 1980.