

Deferred Compensation Plans for Public
Employees of New York State
1985 Legislation

This memorandum supercedes Technical Services Bureau Memorandum TSB-M-83-(7)-I dated April 8, 1983, which should be destroyed.

Chapter 306 of the Laws of 1985 has amended the Tax Law and the Administrative Code of the City of New York to allow public employees who participate in deferred compensation plans a tax benefit for purposes of the New York State, City of New York and City of Yonkers personal income taxes.

Chapter 547 of the Laws of 1982 amended the New York State Finance Law to provide for the implementation of deferred compensation plans for public employees of New York State and its political subdivisions.

The plans must be established under the provisions of Section 547 of the Internal Revenue Code. Generally, the maximum amount that can be deferred in a taxable year is the lesser of \$7,500 or 33 1/3% of the employee's compensation. Amounts deferred under a plan for a taxable year are not includible in federal adjusted gross income for that year. However, distributions from the plans, including earnings on amounts deferred, must be included in federal gross income for the taxable year in which the distribution is made.

Chapter 547 also added Sections 612(b)(26) and 612(c)(27) to the New York State Tax Law. Section 612(b)(26) required participants to add to their federal adjusted gross income the amount deferred under the plan during the taxable year. Section 612(c)(27) permitted participants who properly included a distribution from the plan in their federal adjusted gross income to subtract the part of the distribution that was previously included in total New York income under Section 612(b)(26). A participant in the plan, therefore, received a tax benefit only for federal income tax purposes.

Chapter 306 of the Laws of 1985 repealed the above addition and subtraction modifications for taxable years beginning after December 31, 1984. Therefore, contributions to the plans that are excludible from federal adjusted gross income are also excludible from New York adjusted gross income and distributions from the plans that are includible in federal adjusted gross income are also includible in New York adjusted gross income.

The corresponding addition and subtraction modifications contained in Sections T46-112.0(b)(27) and T46-112.0(c)(26) of the Administrative Code of the City of New York have also been repealed.

Participants in these deferred compensation plans will now receive a tax benefit not only for federal income tax purposes, but also for New York State, City of New York and City of Yonkers personal income tax purposes.

Section 5.6 of the State Finance Law has also been amended to remove the requirement that New York State, City of New York and City of Yonkers income taxes be withheld on the deferred compensation at the time of deferral. Compensation deferred under the plans, and earnings on amounts deferred, will now be subject to state and city income tax withholding in the year such amounts are distributed.

Distributions under the plans do not qualify for the New York State pension and annuity exclusion.

These changes are effective for taxable years beginning after December 31, 1984.