Common questions and answers about pension subtraction adjustments

$20,000 Pension and Annuity Exclusion

Q: What determines if an individual's pension or annuity qualifies for the $20,000 pension and annuity exclusion on the NYS personal income tax return?

A: The individual receiving the pension must be 59½ years of age or over. In addition, the pension and annuity income must be:

- included in federal adjusted gross income (FAGI);
- received in periodic payments (except IRA or Keogh);
- attributable to personal services performed by the individual before their retirement; and
- from an employer-employee relationship or from an employee's tax deductible contributions to a retirement plan.

Q: Does a pension received from another country qualify for the pension and annuity income exclusion?

A: Yes, to the extent included in FAGI not to exceed $20,000. This would qualify for the $20,000 pension and annuity income exclusion provided all the other requirements are met (over 59½, periodic payments, attributable to personal services performed before retirement and an employer-employee relationship exists).

The Internal Revenue Code (IRC) requires that recipients of a pension distribution of $10 or more receive a Form 1099-R. However, foreign pension distributions are not typically reported on Form 1099-R. The taxpayer must retain their contribution/distribution documentation to provide to the department if necessary.

New York State, Local Governments and Federal Government Full Pension Exclusion

Q: The instructions state that a pension received from NYS and local governments or the federal government, the United States, its territories, possessions (or "political subdivisions" thereof) is excluded in arriving at a NYS adjusted gross income figure. What constitutes a political subdivision of the United States?

A: Political subdivisions include the territories and possessions of the United States government: Guam, Puerto Rico, American Samoa, the U.S. Virgin Islands, and the northern Mariana Islands.

Q: Is a pension received from a state other than New York eligible for full exclusion as a NYS and local pension on the NYS return?

A: No. To qualify for full exclusion, the pension must be from a NYS or local government pension plan or a federal pension plan. However, if the taxpayer reached age 59½, the pension may qualify for a pension and annuity income exclusion under Tax Law section 612(c)(3-a), up to $20,000.

Q: Are distributions from a government section 457 deferred compensation plan considered NYS pensions qualified for full exclusion as a NYS pension?

A: No. Government deferred compensation plans are characterized as pension or annuity payments. Since these plans are not funded by the employer, they wouldn't qualify for full exclusion but would qualify for the $20,000 pension and annuity income exclusion under Tax Law section 612(c)(3-a).

Q: Do defaulted loans taken on pension or annuity income distributed from the NYS retirement system qualify for full exclusion?

A: Yes. All distributions reported on Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) issued from the NYS retirement system are fully excludable if the distribution is included in FAGI.

Q: Is a pension for the NYS Thruway Authority considered a NYS pension eligible for the full pension and annuity income exclusion?

A: Yes, provided that the distributions are derived from the NYS Thruway Authority and not from supplemental funds.

Q: Is a pension from the United States Postal Service considered a federal pension eligible for the full pension and annuity income exclusion?

A: Yes, provided that the distributions are derived from the United States Postal Service and not from supplemental funds.

Q: Does a federal pension always qualify for the full government pension and annuity income exclusion?

A: CSRS (Civil Service Retirement System) - If the federal employee was hired before January 1, 1984, income from their Thrift Savings Plan is considered supplemental for which the exclusion is subject to the age and amount limitation to the extent it is included in their FAGI, not to exceed $20,000.

FERS (Federal Employees Retirement System) - If a federal employee was hired on or after January 1, 1984, income from their Thrift Savings Plan is fully excludable to the extent included in FAGI.

TIAA/CREF and SUNY/CUNY

Q: If a taxpayer worked in the private sector, do the retirement payments received from TIAA/CREF (Teachers Insurance & Annuity Association & College Retirement Equities Fund) or ING Financial Advisors qualify for full exclusion as a NYS pension?

A: No. Since private-sector colleges are not funded by NYS, the pension payments do not qualify as NYS pension income. The pension would, however, qualify for the $20,000 pension and annuity income exclusion under Tax Law section 612(c)(3-a).

Q: Do TIAA/CREF retirement payments attributable to a person's employment in SUNY, CUNY, or the NYS Board of Education system qualify for full exclusion as a NYS pension?

A: SUNY, CUNY, and NYS Board of Education employees who opted to join TIAA/CREF as part of the Optional Retirement Plan qualify to exclude their retirement annuity pension income that was contributed by the public employer.

However, distributions from the following don't qualify for full exclusion as a NYS pension since the contributions were made by the employee:

- TIAA/CREF Supplemental Retirement Annuities (SRA);
- 403B plans;
- Group Supplemental Retirement Annuities (GSRA);
- IRAs; or
- Roth IRAs.

These distributions would qualify for the $20,000 pension and annuity income exclusion under Tax Law section 612(c)(3-a).

Q: Do pensions received from the SUNY/CUNY Research Foundation qualify for full exclusion as a NYS pension?

A: No. The Research Foundation is a private, nonprofit educational corporation. As a separate, private corporation, the Research Foundation isn't supported by NYS tax dollars and doesn't receive support services provided to NYS agencies. However, the pension would qualify for the $20,000 pension and annuity income exclusion under Tax Law section 612(c)(3-a).

Q: Does a retirement pension received from Brookhaven National Lab qualify for full exclusion as a NYS pension?

A: No. Brookhaven National Lab is considered a private sector employer and distributions received from TIAA/CREF based on this employment do not qualify for full exclusion as a state, local, or municipal pension. However, the pension would qualify for the $20,000 pension and annuity income exclusion under Tax Law section 612(c)(3-a).

Former Spouses and Beneficiaries

Q: Are direct non-governmental pension payments received by a spouse from an ex-spouse's pension plan, pursuant to a domestic relations order, eligible for the $20,000 pension and annuity income exclusion on the NYS personal income tax return?

A: No. These pension payments do not qualify for the pension and annuity exclusion because they do not arise from an employer-employee relationship between the person receiving the payments and the ex-spouse's employer.

Q: Are direct New York State or federal pension payments received by a spouse from an ex-spouse's pension, pursuant to a domestic relations order, eligible for full exclusion as a NYS or federal government pension?

A: Yes. The payments retain their character as a NYS or federal pension. Because divorce equitably distributes the retirement allowance between the two spouses, the character of the payments from the NYS and local retirement system or federal pensions is retirement income, whether the receiving ex-spouse is the participant or the non-participant ex-spouse. The amount received would be subtracted from FAGI.

Q: Does a death benefit from a decedent's pension plan qualify for the $20,000 pension and annuity income exclusion?

A: Yes. As a beneficiary of a pension, the exclusion is based on the decedent's entitlement, subject to the decedent's age and amount limitations. However, if the recipient elects to transfer or roll it over into their own name, it now becomes subject to the recipient's age (59½) and amount ($20,000) limitations.

Note: If there is more than one beneficiary, the exclusion is prorated to the same percentage share as the distribution.

Q: Does a beneficiary of a pension qualify for the $20,000 pension annuity income exclusion on the NYS return?

A: If it's a NYS, local government or federal pension, the full amount is subtracted from FAGI. If it isn't a NYS, local government, or federal pension, the beneficiary is entitled to up to a $20,000 exclusion if the decedent would have been entitled to it had the decedent continued to live, and it was not claimed on the decedent's final return.

Note: If there is more than one beneficiary:

- the exclusion is prorated in the same ratio as the distribution, and
- the total exclusion claimed by all beneficiaries may not exceed $20,000.

Rollovers

Q: If a qualifying pension is rolled over into an annuity, will the distribution from the annuity qualify for the $20,000 pension and annuity income exclusion?

A: Yes, if the income was included in FAGI and provided all other requirements are met (over 59½, periodic payments, attributable to personal services performed before retirement and an employer-employee relationship exists). However, the client should be advised to keep track of the rollover trail and be prepared to provide the information if requested.

Q: Does a distribution from a NYS and local or federal government pension qualify for a full pension exclusion once it has been rolled over?

A: Yes. However, only the rollover amount is excludable. Any interest or gains on the initial rollover may be eligible for the $20,000 pension and annuity income exclusion. The recipient must keep track of the yearly distributions from the original rollover amount versus distributions attributable to any gain or interest on the rollover amount, and be prepared to provide supporting documentation if requested.

Nonqualified Pensions and Annuities

Q: Does distribution Code D, annuity payments for non-qualified annuity distributions from life insurance contracts that may be subject to tax under section 1411, on Form 1099-R; qualify for the pension exemption?

A: No. The current definition of distribution Code D does not meet the criteria for a qualifying pension and annuity income as outlined in the instructions for Form IT-201, line 29.

Q: If a retired executive receives periodic payments from a deferred compensation plan that isn't considered a qualified pension plan under the IRC, and the payments were considered wages under IRC 3121(v), do these payments qualify for the $20,000 pension and annuity income exclusion under Tax Law section 612(c)(3-a)?

A: Yes. The IRS determined that payments received from the nonqualified plan were wages for federal income tax purposes and were reported on a Form W-2 (only the amount in Box 11 – Nonqualified plans – is eligible for the exclusion). However, it was ruled that the nature of the payment is intended to be pension or annuity, which qualifies for the subtraction modification when certain criteria are met.

Other Basic Pension Questions

Q: If a nonresident of New York State receives a pension from a NYS source, is that taxable by New York State?

A: No. Section 114 of Title 4 of the U.S. Code creates a limitation on state income taxation of certain pension income. The law prohibits states from taxing retirement income received from pension plans recognized as qualified under the IRC.

Q: What happens to the status of a private pension when the obligation is taken over by the Pension Benefactor Guaranty Corporation (PBGC)?

A: The private pension maintains its original status as a private pension even though PBGC is a government agency. Also, if the pension in question was a government pension, the government pension would also maintain its original status. Visit www.pbgc.gov to learn more about PBGC.