



New York State Department of Taxation and Finance

Common Questions for Pension Exclusions

Information for Seniors

- Publication 36, General Information for Senior Citizens and Retired Persons
- http://www.tax.ny.gov/pit/file/information_for_seniors.htm

Pension and Annuity Income Exclusion

- Pension income is not taxable in New York if it is paid by:
 - New York State or local government
 - the federal government, including Social Security benefits and certain railroad retirement benefits
 - certain public authorities
- If an individual is over the age of 59 ½ or turns 59 ½ during the tax year, they may qualify for a pension and annuity exclusion of up to \$20,000 if the amount is included in federal adjusted gross income.

Q. What determines if an amount that an individual receives as a pension or annuity qualifies for the \$20,000 pension and annuity exclusion on the NYS personal Income tax return?

A. The pension and annuity income:

- Must be received by an individual aged fifty-nine and one-half or older.
- Must be included in federal adjusted gross income.
- Must be received in periodic payments (except IRA or Keogh).
- Must be attributable to personal services performed by such individual, prior to such individual's retirement from employment.
- Must arise from an employer-employee relationship or from an employee's tax deductible contributions to a retirement plan.

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 NYS adjusted gross income. Is any state considered a political subdivision of the United States?

A. No. Political subdivisions refers to the political subdivisions of the territories and possessions of the United States government such as Guam, Puerto Rico, American Samoa, and Northern Mariana Islands.

Q. Do defaulted loans taken on pension/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 would be fully excludable to the extent the distribution is included in federal adjusted gross income.

Q. Is a pension received from a state other than New York eligible for full exclusion on the NYS personal income tax return?

A. NO. To qualify for full exclusion the pension must have been received from NYS or local government pension plan or a federal pension plan. However, if you have reached age 59 ½ , the pension may qualify for a pension and annuity income exclusion under Section 612(c)(3-a), up to \$20,000.

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

A. Yes. To the extent the income is included in federal adjusted gross income. This would qualify for the \$20,000 pension and annuity income exclusion provided all other requirements are met (over 59 ½ , periodic payments, attributable to personal services performed prior to retirement, and an employer-employee relationship exists).

NOTE: The IRC code requires that recipients of a pension distribution, \$10 or more, receive a 1099-R. However, foreign pension distributions are not typically reported on Form 1099-R. The taxpayer would have to retain their contribution/distribution documentation to provide to the department if necessary.

Q. Are direct non-governmental pension payments received by a spouse from the 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 spouse 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 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 NYS local retirement system or federal pensions is retirement income, regardless of whether the receiving spouse is the participant or the non-participant spouse. The amount received would be subtracted from federal adjusted gross income.

Q. Does a federal pension always qualify for the full federal government pension exclusion?

- CSRS (Civil Service Retirement System) - If the federal employee was hired before 01/01/1984 income from their Thrift Savings Plan is considered supplemental which the exclusion is subject to the age and amount limitation to the extent it is included in their federal adjusted gross income, not to exceed \$20,000.
- FERS (Federal Employees Retirement System) - If a federal employee was hired on or after 01/01/1984 income from their Thrift Savings Plan is fully excludable to the extent included in their federal adjusted gross income.

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. 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. The distribution from a rollover would qualify for the \$20,000 pension and annuity income exclusion to the extent the income was included in federal adjusted gross income and provided all other requirements are met (over 59 ½ , periodic payments, attributable to personal services performed prior to 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 should it be necessary.

Q. Does a distribution from New York State or local government or federal government pension qualify for a full exclusion once it has been rolled over?

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

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

A. As a beneficiary of a pension, the exclusion is based on the decedent's entitlement; subject to the decedent's age (59 ½) and amount (\$20,000) limitation. However, if the recipient elects to transfer /roll over into their own account, it now becomes subject to the recipient's age (59 ½) and amount limitation (\$20,000).

NOTE: if more than one beneficiary, the exclusion is pro-rated to the same percentage share as the distribution.

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

A. If it is a NYS, local or federal pension, the full amount is subtracted from federal adjusted gross income. If it is not a NYS, local government, or federal pension the beneficiary is entitled to up to a \$20,000 pension and annuity income exclusion if the decedent would have been entitled to it had the deceased continued to live and it was not claimed on the decedent's final return. **However**, the exclusion must be allocated among the beneficiaries in the same ratio as the distribution and the total exclusion claimed of all beneficiaries must not exceed \$20,000.

Q. A nonresident of the State of New York receives a pension from NYS source, is that taxable to the state of New York?

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. 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 pursuant to Section 612(c)(3-a) of the tax law.

Q. Do TIAA-CREF retirement payments attributable to a person's employment in SUNY, CUNY or 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**, if they are receiving distributions from TIAA-CREF Supplemental Retirement Annuities (SRA) 403B plans, Group Supplemental Retirement Annuities (GSRA), IRA's or Roth IRA's, these **DO NOT** qualify for full exclusion as a NYS pension since the contributions were made by the employee. These distributions would qualify for the \$20,000 pension exclusion pursuant to Section 612(c)(3-a) of the tax law.

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 is not supported by New York State tax dollars, and it does not receive support services provided to NYS agencies. **However**, the pension would qualify for the \$20,000 exclusion pursuant to Section 612(c)(3-a) of the tax law.

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 pursuant to Section 612(c)(3-a) of the tax law.

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

A. No. However, government deferred compensation plans are not characterized as wages, but as pension or annuity payments. **However**, since these plans are not funded by the employer, they would not qualify for full exclusion but would qualify for the \$20,000 exclusion pursuant to Section 612(c)(3-a) of the tax law.

Q. If a retired executive receives periodic payments from a deferred compensation plan which is not 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 exclusion pursuant to section 612(c)(3-a) of the tax law?

A. Yes. The Internal Revenue Code determined that the payments received from the nonqualified plan were wages for federal income tax purposes and were reported on a 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 qualify for the subtraction modification when certain criteria is met.