

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

TSB-A-86 (14) I
Income Tax
October 22, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I860701A

On July 1, 1986, a Petition for Advisory Opinion was received from John H. and Margaret E. Doran, 433 Whittier Avenue, Syracuse, New York 13204.

The issue raised is whether benefits received under the Railroad Unemployment Insurance Act and benefits received under Title VII of the Regional Rail Reorganization Act of 1973 are exempt from the personal income tax imposed under Article 22 of the Tax Law. Petitioners have included such unemployment benefits and Title VII benefits in New York adjusted gross income on their New York State personal income tax return for the years 1984 and 1985 and question whether they may receive a refund for taxes paid on these amounts.

The New York adjusted gross income of resident individuals equals such individuals' federal adjusted gross income with certain modifications.

Section 85 of the Internal Revenue Code (26 USCS 85) makes certain unemployment compensation subject to federal income tax. Among the unemployment compensation which may be included in federal adjusted gross income are benefits under section 2 of the Railroad Unemployment Insurance Act (45 USCS 352). See 26 CFR 1.85-1 (b) .

However, the state taxation of Railroad Unemployment Insurance Act benefits is governed by section 352(e) of Title 45 of the United States Code, which provides in pertinent part:

Notwithstanding any other law of the United States, or any State, Territory, or the District of Columbia, no benefits shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

Additionally, section 116.3(t) of the New York State Personal Income Tax Regulations explains that among the items to be subtracted from federal adjusted gross income in computing the New York adjusted gross income of a resident individual are "Railroad unemployment benefits...to the extent they are includible in gross income for federal income tax purposes but exempt from State income taxes under the laws of the United States."

Accordingly, to the extent that Railroad Unemployment Insurance Act benefits received under section 352 of Title 45 of the United States Code are included in Petitioners' federal adjusted gross income, they should be subtracted out in computing Petitioners' New York adjusted gross income. If Petitioners have included such benefits in their New York adjusted gross income on their 1984 and 1985 personal income tax returns, they may apply for a refund of the taxes paid on such amounts.

Section 701 of Title VII of the Regional Rail Reorganization Act of 1973 (45 USCS 797) provides for the payment of funds for allowances to employees deprived of employment, moving expenses, retraining expenses, termination allowances, health and welfare insurance premiums and other purposes. The Regional Rail Reorganization Act of 1973 contains no provision similar to section 352(e) of Title 45 of the United States Code which would exempt such benefits from state taxation. No provision of New York State law or regulations provides for the subtraction of Regional Rail Reorganization Act benefits from federal adjusted gross income in calculating New York adjusted gross income.

Accordingly, to the extent that such benefits are included in federal adjusted gross income, they must also be included in New York adjusted gross income. No subtraction modification is provided for such benefits and Petitioners are not entitled to a refund of taxes paid on such amounts.

DATED: October 22, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.