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

TSB-A-87 (11) I
Income Tax
December 22, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. I870923B

On September 23, 1987, a Petition for Advisory Opinion was received from Robert Stolberg, 619 West 140th Street, New York, New York 10031.

The issue raised is the applicability of the $20,000 pension and annuity exclusion provided by section 612(c)(3-a) of the Tax Law to payments received from a Teachers Insurance Annuity Association (T.I.A.A.) retirement annuity contract and from a College Retirement Equities Fund (C.R.E.F.) retirement annuity contract.

Petitioner is a former employee of the American Museum of Natural History. While employed there, Petitioner purchased a set of T.I.A.A.-C.R.E.F. annuity contracts. Petitioner's employer was required to certify Petitioner as an educational institution employee. However, the employer was not otherwise involved in the purchase of the annuity contracts. Petitioner paid all premiums on the contracts with his own funds. All such premiums were billed directly to Petitioner. Petitioner is now retired and over 59½ years of age and is receiving monthly payments from his T.I.A.A.-C.R.E.F. annuities.

Section 612(c)(3-a) of the Tax Law provides an exclusion from the New York adjusted gross income of an individual who is at least 59½ years of age, such exclusion not to exceed $20,000, for pensions and annuities which: (1) are periodic payments attributable to personal services performed by such individual prior to his retirement from employment; and (2) arise from (a) an employer-employee relationship, or (b) contributions to a retirement plan which are deductible for federal income tax purposes.

Additionally, distributions from IRA and Keogh plans also qualify for exclusion.

While Petitioner has attained the age of 59½ years and is receiving periodic payments from an annuity, such payments are not attributable to personal services performed by Petitioner. Rather such payments are entirely attributable to the premium payments made by Petitioner from his own funds. Additionally, such payments are not distributions from IRA or Keogh plans.

Accordingly, the payments received by Petitioner pursuant to the T.I.A.A.-C.R.E.F. annuity contracts do not qualify for the exemption provided by section 612(c)(3-a) of the Tax Law.

DATED: December 22, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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