

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

TSB-A-89 (4) I
Income Tax
April 11, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1881208B

On December 8, 1988, a Petition for Advisory Opinion was received from Bernstein Government Short Duration Portfolio of Sandford C. Bernstein Fund, Inc., 767 Fifth Avenue, New York, New York 10153.

The issue raised is whether "obligations of the United States" as used in section 612(c)(1) of the Tax Law with respect to the treatment of dividends from a regulated investment company includes the obligations of federal agencies, such as those enumerated in TSB-M-86-(8)I.

Petitioner is a registered open-end management investment company. Petitioner contends that (1) the purpose and intent of Chapter 535 of the Laws of 1986 which adopted the regulated investment company (hereinafter "RIC") pass-through provisions for interest on federal obligations, (2) the rules of statutory construction applied to the statute against the background of the legislative history and (3) the meaning applied to the term "obligations of the United States" in other contexts, each and in combination, require a conclusion that for purposes of the RIC pass-through provisions of section 612(c)(1) "obligations of the United States" includes obligations of federal agencies such as those listed in TSB-M-86-(8)I.

Section 612(c) of the Tax Law, as amended by Chapter 535 of the Laws of 1986, provides, in part:

There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes; such interest income shall include the amount received as dividends from a regulated investment company, as defined in section eight hundred fifty-one of the internal revenue code, which has been designated as the amount of such interest income in a written notice to shareholders not later than forty-five days following the close of its taxable year; provided that, at the close of each quarter of the taxable year of such regulated investment company, at least fifty percent of the value of its total assets, as defined in subsection (c) of section eight hundred fifty-one of the internal revenue code, consists of obligations of the United States and its possessions.

Chapter 535 of the Laws of 1986 was enacted to permit individuals who invest in United States government obligations through RIC's to treat the income they receive therefrom as if they had directly invested in such securities. Specifically, section 612(c)(1) of the Tax Law was amended to

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provide that interest income on obligations of the United States and its possessions includes income received from a RIC that is attributable to its investment in obligations of the United States and its possessions. (See NY Legis Ann, 1986, p 246).

Technical Services Bureau Memorandum TSB-M-86-(8)I provides a list of obligations issued by the United States government, states and municipalities, and states whether the interest on each obligation is subject to New York State income tax. Such list is not all inclusive. However, taxpayers should consult such list when computing the modifications contained in section 612(b) and (c) of the Tax Law.

Since the dividends received by individuals from RIC's that invest in obligations of the United States and its possessions is treated as interest income pursuant to section 612(c)(1), such individuals may look to TSB-M-86-(8)I for guidance in determining what is meant by "obligations of the United States and its possessions."

It should be noted that where the RIC invests its assets in repurchase agreements whose subject matter consists of United States obligations, the income from such repurchase agreements does not represent interest income from "obligations of the United States and its possessions" and, thus, are fully taxable to the individual recipients for New York State income tax purposes. See Technical Services Bureau Memorandum TSB-M-88-(5)I.

DATED: April 11, 1989

s/FRANK J. PUCCIA
Director
Technical Services

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