

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

TSB-A-90 (2) I
Income Tax
January 11, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

Petition No. I891031B

On October 31, 1989, a Petition for Advisory Opinion was received from Robert L. Hoffman, 111 Little Brook Road, New Canaan, Connecticut 06840.

The issue raised is what portion of a Financial Assistance Payment received by Petitioner, Robert L. Hoffman, a nonresident of New York State, from his employer in connection with his early retirement is subject to New York State personal income tax.

Petitioner was employed by IBM for 29 years and 3 months before retirement. During his first 20 years and six months, since employment on January 11, 1960, he performed his duties as an IBM employee wholly outside of New York State. From July 1, 1980 to his retirement on April 1, 1989, he performed his duties in New York State. He has not performed any personal services or engaged in any business occupation or profession since the date of his retirement and none is anticipated in the future. He has never been a resident of New York State and other than his employment by IBM has never performed any other business, occupation or profession in New York State.

IBM gave Petitioner a Financial Assistance Payment of two years' salary in connection with his early retirement on April 1, 1989. This was a one-time lump-sum payment based on four weeks' pay, at the 1989 final salary rate, for each year of service, up to a maximum of two years' salary. The Financial Assistance Payment did not qualify as an annuity pursuant to Section 131.4(d)(2) of the Personal Income Tax Regulations.

Section 131.4(d)(1) of the Personal Income Tax Regulations provides in part that:

...Where a pension or other retirement benefit does not constitute an annuity, it is compensation for personal services and, if the individual receiving it is a nonresident, it is taxable for York State personal income tax purposes to the extent that the services were performed in New York State. The term compensation for personal services as used in the foregoing sentence includes, but is not limited to, amounts received in connection with ... amounts received upon early retirement in consideration of past services rendered,... For allocation rules, see section 131.20 of this Part.

Section 131.20 of the Personal Income Tax Regulations provides that:

If a pension or other retirement benefit does not qualify as an annuity under subdivision (d) of section 131.4 of this Part, and is attributable to services performed wholly within New York State, the entire amount included in the

individual's Federal adjusted gross income is likewise includible in his New York adjusted gross income. If the pension or other retirement benefit is attributable to services performed wholly outside New York State, no part of the amount received is includible in the individual's New York adjusted gross income. Where the employee's services were performed partly within and partly without New York State, the amount includible in the individual's New York adjusted gross income is the proportion of the amount included in the individual's Federal adjusted gross income which the total compensation, received from the employer for the services performed in New York State during a period consisting of the portion of the taxable year prior to retirement and the three taxable years immediately preceding the retirement, bears to the total compensation received from the employer during such period for services performed both within and without New York State. For purposes of this section, the compensation for services performed within New York State must be determined separately for each taxable year or portion of a year in accordance with the applicable provisions of section 131.17, 131.18 or 131.19 of this Part. A determination of the portion of a pension or other form of deferred compensation attributable to New York State on the basis of a period of time greater than the period referred to above may be made if the individual establishes, to the satisfaction of the Tax Commission, the amount of his total yearly compensation for a longer period of time and the amount allocable to New York State in each year in accordance with the applicable provisions of sections 131.17 through 131.19 of this Part. (For taxability of pensions and other retirement benefits in general, see subdivision [d] of section 131.4 of this Part.)

Section 131.18(a) of the Personal Income Tax Regulations provides in part that:

If a nonresident employee (including corporate officers, but excluding employees provided for in section 131.17 of this Part) performs services for his employer both within and without New York State, his income derived from New York State sources includes that proportion of his total compensation for services rendered as an employee which the total number of working days employed within New York State bears to the total number of working days employed both within and without New York State

In accordance with Section 131.4(d)(1) of the Regulations the Financial Assistance Payment received by Petitioner from IBM constitutes compensation for personal services received upon early retirement in consideration for past services rendered. Therefore, the payment is subject to the allocation rules set forth in Section 131.20 of the Regulations.

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Section 131.20 of the Regulations first provides that payments, such as the Financial Assistance Payment received by the Petitioner, are deemed attributable to services performed in New York during the portion of the year of retirement and the three years prior to retirement and are allocated according to the ratio of all New York source salary to total salary everywhere for the period. Since Petitioner had worked exclusively in New York for eight years and nine months prior to his retirement, under this formula his entire Financial Assistance Payment would be subject to New York State personal income tax.

However, under Section 131.20 the Petitioner may also base his allocation of the Financial Assistance Payment on the basis of 20 years and six months worked outside of New York State out of a total of 29 years and three months worked, if he can establish to the satisfaction of the Commissioner of Taxation and Finance the amount of his total yearly compensation over the 29 year and three month period and the amount attributable to New York State in each year in accordance with the formula set forth in Section 131.18(a) of the Regulations.

DATED: January 11, 1990

PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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