

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

TSB-A-90 (8) I
Income Tax
June 29, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I900110C

On January 10, 1990, a Petition for Advisory Opinion was received from Charles E. Rockey, 41-40 Union Street, Flushing, New York 11355.

The issue raised by Petitioner, Charles E. Rockey, is whether pension payments received in 1989 from the Federal Reserve Retirement Plan is exempt from taxation under section 612(c)(3)(ii) of the Tax Law.

Petitioner is a retired employee of the Federal Reserve Bank of New York and in 1989 received pension payments from the Federal Reserve Retirement Plan. The Federal Reserve Bank of New York is one of 12 federal reserve banks that comprise the Federal Reserve System that was created by an Act of Congress. The Federal Reserve System reports to and is governed by the Board of Governors of the Federal Reserve System. The members of the Board are appointed by the President of the United States with the consent of the Senate.

The Office of the Federal Reserve Employee Benefits System administers the retirement and certain other employee benefit plans and programs established by the Board of Governors and the federal reserve banks for the eligible employees of the Federal Reserve System. One of the plans administered is the Federal Reserve Retirement Plan that provides retirement and ancillary benefits for eligible retired employees of the federal reserve banks. The Federal Reserve Retirement Plan is subject to the direction and control of the Board of Governors and the federal reserve banks.

Section 612(c)(3)(ii) of the Tax Law provides that there shall be subtracted from federal adjusted gross income, pensions to officers and employees of the United States, or any agency or instrumentality of the United States, to the extent includible in gross income for federal income tax purposes.

Such provision was added in 1989 in response to the United States Supreme Court decision in Davis v Michigan Department of the Treasury, 109 S CT 1500, 103 L Ed 2d 891, (1989), which held that States such as New York that exempt pensions of their own employees from income taxes must provide a similar exemption to employees of the federal government. (TSB-M-89(9)I) The Court relies on 4 USC 111 which provides as follows: "[t]he United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States . . . by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation."

Section 7 of the Federal Reserve Act provides that "[f]ederal reserve banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate. " 12 USC § 531

TSB-A-90 (8) I
Income Tax
June 29, 1990

Section 501(a) and (c)(1) of the Internal Revenue Code (hereinafter "IRC") provide that any corporation organized under an Act of Congress which is an instrumentality of the United States and is exempt from federal income taxes under such Act is an exempt organization. To qualify for exemption under section 501(c)(1) of the IRC, a corporation must be an instrumentality of the United States.

The federal reserve banks have been deemed to be federal instrumentalities for purposes of immunity from state taxation. (Lewis v United States, 680 F2d 1239 (1982) and Federal Reserve Bank of Boston v Commissioner of Corporations & Taxation, 499 F2d 60 (1974), after remand, 520 F2d 221 (1975))

In addition, section 414(d) of the IRC defines a "governmental plan" for purposes of the IRC pension rules as "a plan established and maintained for its employees by the Government of the United States...or by any agency or instrumentality of...the forgoing."

On March 23, 1976, the Internal Revenue Service issued a private letter ruling to the representative of the Federal Reserve Employee Benefits System. The Internal Revenue Service concluded that the Federal Reserve System is an instrumentality of the United States for purposes of section 414(d) of the IRC and that the employee's deferred compensation plans established and maintained by the Board of Governors of the Federal Reserve System, the federal reserve banks and the Office of the Federal Reserve Employees Benefit System, constitute governmental plans within the meaning of section 414(d) of the IRC and are exempt from the provision of Title II of ERISA [Employee Retirement Income Security Act of 1974] to the extent that governmental plans are exempt. The Internal Revenue Service discussed this issue with the Office of Employee Benefits Security, Department of Labor, and that Office concurred.

Accordingly, Petitioner's 1989 pension payments from the Federal Reserve Retirement Plan are pension payments paid to an employee of an instrumentality of the United States, and therefore are exempt from tax pursuant to section 612(c)(3)(ii) of the Tax Law.

DATED: June 29, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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