

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

TSB-A-92 (8) I
Income Tax
September 29, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I911125C

On November 25, 1991, a Petition for Advisory Opinion was received from Transit Supervisors Organization, 10 West Fordham Road, Bronx, New York 10468.

The issue raised by Petitioner, Transit Supervisors Organization, is whether the pensions paid to employees of the Manhattan and Bronx Surface Transit Operating Authority (hereinafter "MABSTOA") is taxable for purposes of the personal income tax imposed under Article 22 of the Tax Law.

This issue was addressed in an Advisory Opinion issued to Transport Workers Union of Greater New York (Adv Op St Tax Comm, December 9, 1986, TSB-A-86(18)I). Therein, the Tax Commission opined that the MABSTOA pension plan is not a "New York State or municipal retirement system" within the meaning of former section 116.3(c) (now section 112.3(c)) of the Personal Income Tax Regulations and therefore, is not exempt from the personal income tax pursuant to section 612(c) (3) the Tax Law which exempts "[p]ensions of officers and employees of this state, its subdivisions and agencies ... "

However, the opinion noted that the pensions paid by MABSTOA would qualify for the exemption provided by section 612(c) (3-a) of the Tax Law which exempts:

[p]ensions and annuities received by an individual who has attained the age of fifty-nine and one half, not otherwise excluded pursuant to paragraph three of this subsection, to the extent includible in gross income for federal income tax purposes, but not in excess of twenty thousand dollars, which are periodic payments attributable to personal services performed by such individual prior to his retirement from employment, which arise (i) from an employer-employee relationship or (ii) from contributions to a retirement plan which are deductible for federal income tax purposes.

Since the Advisory Opinion was issued, the MABSTOA pension plan has been revamped using the pension fund for employees of the New York City Transit Authority as a model. Employees on Tier III and Tier IV make contributions including a three percent payable deduction into the MABSTOA fund. This contribution is similar to that made by Transit Authority employees into the New York City Employee Retirement System except these employees pay into the MABSTOA fund.

The MABSTOA fund however, unlike the Transit Authority fund, is not governed, funded or administered through the New York City Employee Retirement System. Instead, the MABSTOA fund is run by a Board consisting of two representatives from the Union and from management.

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Accordingly, the revamped MABSTOA pension plan is not a "New York State or municipal retirement system" within the meaning of former section 116.3(c) (now section 112.3(c)) of the Personal Income Tax Regulations and therefore, is not exempt from the personal income tax pursuant to section 612(c)(3) of the Tax Law which exempts "[p]ensions of officers and employees of this state, its subdivisions and agencies ..." Transport Workers Union of Greater New York, Adv Op St Tx Comm, December 9, 1986, TSB-A-86(18)I.

However, the revamped MABSTOA pension plan still qualifies for the exemption provided by section 612(c)(3-a) of the Tax Law.

DATED: September 29, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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