

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

TSB-A-96 (6) I
Income Tax
December 24, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I961002B

On October 2, 1996, a Petition for Advisory Opinion was received from Michael Napolitano, 8575 NW 115th Avenue, Ocala, Florida 34482.

The issue raised by Petitioner, Michael Napolitano, is whether a lump-sum payment from an eligible deferred compensation plan under section 457 of the Internal Revenue Code, that is paid to a nonresident of New York State, is "retirement income" as defined in Public Law 104-95 and exempt from New York State personal income tax under Article 22 of the Tax Law.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a resident of and domiciled in Florida, having moved out of New York State on August 1, 1995.

Petitioner, while an employee of New York State, participated in the New York State Deferred Compensation Plan (Copeland Plan 457). The New York State deferred compensation plan is a plan established under the provisions of section 457 of the Internal Revenue Code. All of the contributions and a substantial amount of the gains were accumulated during the time Petitioner was a resident domiciliary of New York State.

Petitioner desires to effect a lump-sum withdrawal of all funds available in his deferred compensation account, either in late 1996 or early 1997. The funds on deposit consist of over \$8,000 in tax deferred contributions, and over \$5,000 in tax deferred gains.

Section 114(a) of Title 4 of the US Code, as added by Public Law 104-95, January 10, 1996, provides that "[n]o State may impose an income tax on any retirement income of an individual who is not a resident or domiciliary of such State (as determined under the laws of such State)." Section 114(b)(1) of Title 4 of the US Code defines the term "retirement income" as "any income from ... (F) an eligible deferred compensation plan (as defined in section 457 of [the Internal Revenue Code] " Section 114(c) of Title 4 of the US Code provides that these provisions shall apply to amounts received after December 31, 1995.

Accordingly, pursuant to section 114 of Title 4 of the US Code, New York State may not impose personal income tax under Article 22 of the Tax Law on the retirement income of an individual who is not a resident or domiciliary of the State. An individual's retirement income includes income from a deferred compensation plan under section 457 of the Internal Revenue Code.

In this case, the New York State deferred compensation plan is a plan described under section 457 of the Internal Revenue Code. Therefore, pursuant to section 114(a) of Title 4 of the US Code, the income Petitioner receives from the deferred compensation plan in a lump-sum payment while not a resident or

TSB-A-96 (6) I
Income Tax
December 24, 1996

domiciliary of New York State would be exempt from New York State's personal income tax under Article 22 of the Tax Law for a lump-sum payment received from the plan after December 31, 1995.

DATED: December 24, 1996

s/John W. Bartlett
Deputy Director
Technical Services Bureau

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