

What is an Annuity for New York State Personal Income Tax Purposes

The Tax Department has received many inquiries concerning what constitutes an annuity in the following two situations.

1. If a retirement plan constitutes a qualified pension as defined under Internal Revenue Code Section 401(a), the income from it may qualify for the New York State pension and annuity income exclusion under Section 612(c)(3-a) of the Tax Law. Retirement income may also be excluded if the retirement benefit qualifies as an annuity.
2. Where an individual formerly employed in New York State retires from his employment in New York State and thereafter receives a pension or other retirement benefit attributable to his former services, the pension or retirement benefit is not taxable to New York if the individual receiving it is a nonresident and if it also constitutes an annuity.

Section 131.4(d) of the New York State Income Tax Regulations provides in part that to qualify as an annuity the benefit must be considered a retirement benefit for federal income tax purposes and it must meet all of the following tests:

1. It must be paid in money only, not in stocks, bonds or other property of the employer.
2. It must be paid at regular intervals, at least annually, for the life of the individual receiving it, or over a period not less than half the individual's life expectancy as of the date payments begin.
3. It must be payable:
  - a. At a rate which remains uniform during the recipient's life or period
  - b. At a rate which varies only
    - i. with a change in the market value of the assets from which the benefits are payable;
    - ii. with a change in a specified and generally recognized cost of living index;
    - iii. with the commencement of social security benefits; or
  - c. In such a manner that the total of the amounts payable is determinable at the annuity starting date.
4. The right to receive the benefit must be evidenced by a written plan executed by the individual's employer or by a definite written plan established and maintained by the employer that is communicated to all employees.

Cross Reference:

For an example of what constitutes an annuity see Technical Services Bureau, Advisory Opinion (TSB-A-83-(2)-I) dated April 6, 1983.

For more information on the Pension and Annuity Income Exclusion see Technical Services Bureau, Memorandum (TSB-M-81-(19)-I (Rev.)) dated June 21, 1982.