STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
WILLIAM AND EILEEN NOSTROM	:	DETERMINATION DTA NO. 818851
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax Under Article 22 of the Tax Law for the Year 1995.	:	

Petitioners, William and Eileen Nostrom, 135 Bermuda Way, North Port, Florida 34287, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1995.

On July 10, 2002 and August 5, 2002, respectively, petitioner, appearing by Robert A. Levy, CPA, and the Division of Taxation, by Barbara G. Billet, Esq. (Barbara J. Russo, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based upon documents and briefs to be submitted by January 31, 2003, which date commenced the six-month period for issuance of this determination. After due consideration of the documents and arguments presented, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether lump-sum distributions from Individual Retirement Accounts ("IRA") and certain other amounts of pension income received in 1995 by petitioner William Nostrom, a retired nonresident of New York, were properly held subject to New York State personal income tax.

FINDINGS OF FACT

1. Petitioners, William and Eileen Nostrom, moved from New York State to Florida in or about June 1995. Thereafter, they filed a timely New York State Nonresident and Part-Year Resident Income Tax Return (Form IT-203) for 1995.[1] On this return, petitioners reported $108,280.00 as a federally taxable IRA distribution and $67,899.00 as federally taxable pension and annuity income. Petitioners reported $45,000.00 of the IRA distribution as New York State income and none of the pension and annuity income as New York State income.

2. The Division of Taxation ("Division") audited petitioners' Form IT-203 for 1995. As a result of this audit, the Division determined that the full $108,280.00 amount of petitioners' IRA distribution was properly subject to New York State tax, thus increasing petitioners' New York taxable income by $63,280.00. In addition, the Division determined that $33,154.07 of petitioners' pension and annuity income was properly subject to New York State tax and increased petitioners' New York taxable income by such amount.[2] Thus, the Division increased petitioners' New York taxable income for 1995 by the total amount of $96,434.07 ($63,280.00 plus $33,154.07), and calculated additional tax due thereon for such year in the amount of $5,393.30.

3. On May 30, 2000, the Division issued to petitioners a Notice of Deficiency asserting additional personal income tax due for the year 1995 in the amount of $5,393.30, plus interest. This notice was based on the audit adjustments described above.

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[1] Petitioners' return was filed under the status "Married filing joint return." However, the issue in this case involves income received only by petitioner William Nostrom and therefore references to petitioner or petitioners will mean only William Nostrom, unless otherwise noted.

[2] The Division allowed as an exclusion the $34,744.93 portion of petitioners' $67,899.00 pension and annuity income which was received by petitioner William Nostrom as an annuity, calculated as the $3,158.63 monthly amount received by petitioner starting in February 1995 and continuing through the balance of 1995.

4. There is no dispute that the income held subject to tax by the Division represented pension distributions which were not shown to have been made as annuity payments (as such are defined) and lump-sum IRA distributions. It is undisputed that these distributions were received by petitioners during 1995 after they had become nonresidents of New York State. It is also undisputed that the funds from which these distributions were made were built up by petitioner William Nostrom in the Boilermaker-Blacksmith National Pension Trust and the Putnam Fiduciary Trust Company as his pension and retirement plans over a 32-year period of employment in New York State. The IRA lump-sum distributions represented accumulated monies which had been previously rolled over into IRA funds pursuant to accepted rollover procedures.

CONCLUSIONS OF LAW

A. Tax Law former § 631(a), as in effect for the year at issue, provided that the New York source income of a nonresident individual shall include the sum of the net amount of the items of income, gain, loss and deduction entering into the individual's Federal adjusted gross income which are derived from or connected with New York sources. Tax Law § 631(b)(1)(B) specifies that items of income attributable to "a business, trade, profession or occupation carried on in this state" are derived from or connected with New York sources.

B. Regulations of the Commissioner of Taxation and Finance at 20 NYCRR 132.4(d)(1), pertaining to “Pensions or other retirement benefits constituting an annuity” provided, in relevant part, as follows:

> [w]here an individual formerly employed in New York State is retired from service and thereafter receives a pension or other retirement benefit attributable to his former services, the pension or retirement benefit is not taxable for New York State personal income tax purposes *if the individual receiving it is a nonresident and if it constitutes an annuity as defined in paragraph (2) of this subdivision*. 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 New York State personal income tax purposes to the extent that the services were performed in New York State. (Emphasis as in original.)

C. The Commissioner's Regulations go on to define an annuity, in relevant part, as follows:

> Definition. - To qualify as an *annuity*, a pension or other retirement benefit must meet the following requirements:
>
> (i) It must be paid in money only, not in securities of the employer or other property;
>
> (ii) *It must be payable at regular intervals, at least annually, for the life of the individual receiving it, or over a period not less than half of such individual's life expectancy as of the date payments begin . . . .*
>
> (iii) It must be payable:
>
> (*a*) at a rate which remains uniform during such life or period; or
>
> (*b*) at a rate which varies only with:
>
> (*1*) the fluctuation in the market value of the assets from which such benefits are payable;
>
> (*2*) the fluctuation in a specified and generally recognized cost-of-living index; or
>
> (*3*) the commencement of social security benefits . . .
> (20NYCRR 132.4 [d][2]).

D. Neither the 1995 IRA lump-sum distributions received by petitioners, nor the portion of petitioners' 1995 reported pension and annuity income other than the $34,744.93 amount representing the 11 monthly payments of $3,158.63 received from February through December 1995, meet the definition of, or qualify as, an annuity. As specified in the foregoing regulations, to qualify as an annuity the benefits must be payable at regular intervals, at least annually, for the life of the receiving individual or over a period of not less than half of that individual's life

expectancy. The lump-sum IRA payments in question clearly fall outside of this definition. Further, there is no evidence to show that the portion of the pension payments exceeding the $3,158.63 monthly amount received by petitioners constituted an annuity or was anything other than a lump-sum distribution. Petitioners' argument that the funds from which these distributions were generated had been accumulated in pension and annuity plans over a period of 32 years, and that they should not be taxed simply because Mr. Nostrom chose to take the distributions as lump-sum payments, is simply unavailing.

E. In ***Matter of Hoffman*** (Tax Appeals Tribunal, November 23, 1994) and ***Matter of Wolf*** (Tax Appeals Tribunal, March 7, 1996), the Tribunal decided that lump-sum retirement benefits, including lump-sum IRA distributions, were directly connected to the performance of past services, and a nonresident of New York must pay income tax on such amounts based upon the proportionate level of services historically performed in New York. As noted in Finding of Fact "4", petitioners concede that the contributions from which the instant lump-sum payments were made resulted from monies put away during petitioner William Nostrom's New York employment. Consequently, there is no issue in the matter at hand concerning the allocation of the subject distributions between New York and other states, since no services were performed by petitioner William Nostrom outside of New York. Accordingly, the Division properly held the distributions in issue subject to New York State personal income tax.

F. Finally, petitioners seek relief by referring to a change in the law for 1996. Presumably, petitioners' reference is to Title 4 of the United States Code (4 USC § 114), which was enacted in 1996 and provides that, for amounts received subsequent to December 31, 1995, "[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." Unfortunately for petitioners, section 114 applies only to

income received after December 31, 1995, and therefore has no effect on the taxability of petitioners' distributions for the year at issue herein (***see Matter of Wolf, supra.***).

G. The petition of William and Eileen Nostrom is hereby denied and the Notice of Deficiency dated May 3, 2000 is sustained.

DATED: Troy, New York
May 29, 2003

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE