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Letter Ruling 79-17: Non-Contributory State Pension Paid to a Non-Resident

July 6, 1979

In your letter of May 23, 1979, you request a ruling as to the Massachusetts income tax consequences of your non-contributory Commonwealth of Massachusetts pension.

You were an employee of Massachusetts until 1969, the year you retired. In 1970 you became a legal resident of New Hampshire and began receiving a Commonwealth of Massachusetts non-contributory pension; you have been paying Massachusetts income taxes on this non-contributory pension.

Massachusetts General Laws Chapter 62, Section 2(a)(2)(E) deducts from Massachusetts gross income "... income from a contributory ... pension to which the employee has contributed." There is no similar deduction or exclusion for a non-contributory pension plan such as the one described above.

Prior to 1971, Massachusetts law specifically exempted from taxation all retirement allowance from the Commonwealth paid to non-residents. However, the current law as to non-residents which became effective in 1971 provides in part that:

Massachusetts gross income [of a non-resident] shall be determined solely with respect to items of gross income from sources within the Commonwealth of such person ... Items of gross income from sources within the Commonwealth are items of gross income derived from or effectively connected with any trade or business, including employment carried on by the taxpayer in the Commonwealth or derived from the ownership of any interest in real or tangible personal property located in the Commonwealth. (Massachusetts General Laws Chapter 62, Section 5A.)

Based on the foregoing it is ruled that a non-contributory pension paid to you as a non-resident of Massachusetts is taxable as an item of "gross income derived from or effectively connected with any trade or business, including employment carried on by the taxpayer in the Commonwealth ...," as provided for in Massachusetts General Laws Chapter 62, Section 5A.

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/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

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