



STATE OF DELAWARE
DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE BUILDING
820 N. FRENCH STREET
WILMINGTON, DELAWARE 19801

DIVISION OF REVENUE
TAX RULING 78-1

January 6, 1978

- Personal Income Tax
 Treatment of Lump-Sum Distributions From Qualified
 Retirement Plans

Under Federal Law, a separate tax at ordinary income rates is imposed on that portion of a lump-sum distribution from a qualified retirement plan which is attributable to post 1973 service, subject to a special ten-year forward averaging device; whereas the portion of the lump-sum distribution which is attributable to pre-1974 service is treated and taxed as long-term capital gain. Under Section 402 (e) (4) (L), Internal Revenue Code, as amended by the Tax Reform Act of 1976, taxpayers may elect to treat a lump-sum distribution from a qualified retirement plan as if it were entirely attributable to participation in the plan after 1973. For Federal income tax purposes, if such election is made, the entire lump-sum distribution is excluded from Federal adjusted gross income and taxed separately as ordinary income with ten-year forward averaging applicable in computing the separate tax. Under prior Delaware Law, the amount excluded from Federal adjusted gross income would have escaped Delaware income tax.

Section 1106 (a) (3), 30 Del. C., (as added by House Bill No. 622, 129th General Assembly, approved by the Governor on December 30, 1977) eliminates this unintended benefit by providing that when such election for Federal purposes is made with respect to a lump-sum distribution from a qualified retirement plan, a modification to Federal adjusted gross income is required on the Delaware return in arriving at Delaware taxable income. The modification requires that there be added back to Federal adjusted gross income the amount of the deduction allowed by Section 62 (11) and Section 402 (e) (3), Internal Revenue Code. Thus, if a taxpayer elects to treat the entire lump-sum distribution (including the capital gain portion) as ordinary income for Federal tax purposes, then on his Delaware return (Schedule A) Federal adjusted gross income must be increased by the entire amount of the lump-sum distribution allowed as a

deduction from gross income under Federal Law. In those instances where the taxpayer does not include the capital gain portion of the lump-sum distribution in his election for Federal purposes, then only the ordinary income portion will be added back to Federal adjusted gross income on his Delaware return.



John L. Sullivan
Director of Revenue

mrs