to permanent employees. This amendment appears to have upset prior Civil Service Department rulings that aggregate service should be considered in determining the annual vacation time earned, since it clearly states "credit shall be given for all continuous full-time service".

Assuming compliance with the procedural requirements in adopting rules and regulations to the effect that aggregate service shall count in determining vacation time allowable and accumulated sick leave under R. S. 11:14-1, R. S. 11:14-2, R. S. 11:24A-1 and R. S. 11:24A-3, such interpretation would appear to be valid before the enactment of R. S. 11:14-1.1. Subsequent to the enactment of R. S. 11:14-1.1, it would appear that only "continuous service" could be counted in the computation of vacation time pursuant to R. S. 11:14-1. To count periods of service prior to a break in service, under R. S. 11:14-1 would require an interpretation of "all continuous, full-time service" contrary to the plain meaning of the words; to discount all periods prior to a break in service may work obvious hardships in some cases; to have different rules applicable to parallel sections R. S. 11:14-1 and R. S. 11:24A-1 will result in a complete lack of uniformity.

It must be noted, however, that in computing accrued *sick leave* pursuant to R. S. 11:14-2 and R. S. 11:24A-3, aggregate service of employees in the classified service should be used rather than continuous service.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: JOHN W. GRIGGS,
Deputy Attorney General.

jwg;d

OCTOBER 20, 1953.

HONORABLE WALTER T. MARGETTS, JR.,
State Treasurer,
State House,
Trenton, N. J.

FORMAL OPINION—1953. No. 42.

DEAR SIR:

You have requested my opinion concerning two questions relating to the Corporation Business Tax Act (N. J. S. A. 54:10A-1, et seq.). You desire to be advised specifically on the following:

(1) Can the State of New Jersey institute legal proceedings against a company in New York to enforce the collection of delinquent franchise and corporation business taxes?

(2) Does the Director of the Division of Taxation have the authority to employ the agreement method provided under N. J. S. A. 54:10A-19.1(c) to make a settlement with the taxpayer for such sum less than the full amount due as to him seems expedient under the circumstances?

I shall endeavor to answer the questions in the same sequence in which they appear in your letter.

Taxes due by a taxpayer are in the nature of a personal debt to the State and the same may be recoverable in any court of competent jurisdiction in an action in debt in the name of the State (R. S. 54:49-1). The important point to be determined, relating to your question (1), is whether the State of New Jersey can enforce its revenue laws in another State or political subdivision thereof. Generally speaking, a tax is an impost levied for the support of the government or for some public purpose, or by some agency having a certain governmental function delegated to it, such as a municipal corporation. It is not based on a contract, neither express nor implied, as the consent of the taxpayer is not necessary for its collection. I find no cases wherein the revenue laws of one State would have equal force for the collection thereof in another State, the general rule of law being that one State will not enforce the revenue laws of another. However, I am of the opinion that if suit were instituted in our courts to recover the taxes due in an action-in-debt, the State would then be permitted to institute a suit in a foreign State on said judgment.

It is a well-known principle of law that full faith and credit extends to a judgment obtained in one State and sued upon in another State. The courts of one State cannot refuse to give full faith and credit to a judgment of a court of a sister State, pursuant to the Federal Constitution requirement. A judgment recovered in one State is constitutionally entitled to full faith and credit in the courts of every State. This principle was laid down by the United States Supreme Court in the case of *Texas* vs. *Florida,* 306 U. S. 398. In the case *supra,* 59 S. Ct., 563, at page 570, the Court said in part:

> "* * * And a judgment thus obtained is binding on the parties to it and constitutionally entitled to full faith and credit in the courts of every other State. * * *"

In *Milwaukee County* vs. *M. E. White Co.,* 296 U. S. 268, 56 S. Ct., 229, at page 233, the Court said:

> "* * * A cause of action on a judgment is different from that upon which the judgment was entered. In a suit upon a money judgment for a civil cause of action, the validity of the claim upon which it was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right which gave rise to it, the judgment is an obligation to pay money in the natuure of a debt upon a specialty. * * *"

Therefore, be advised that our opinion, relating to question (1) of your inquiry, is that the State of New Jersey can institute legal proceedings against Pettit and Reed in the Courts of our State in an action-in-debt, and then subsequently institute an action in a sister State on the judgment.

Answering your question No. 2, I am of the opinion that the Director does not have the authority to make a settlement with the taxpayer for such sums less than the full amount due, unless the Director can spell out that the remission, cancellation and abatement of the tax debt is supported by a legal, equitable or moral consideration. From the facts submitted to me, I must answer this question in the negative for the Director.

The Constitution of the State of New Jersey (1947), Article VIII, Section 3, paragraph 3, provides:

> "No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or *corporation* whatever." (Italics ours.)

An appropriation, directly or indirectly, by the State to a private corporation, founded upon a transaction wherein a sufficient quid pro quo is not easily discoverable and justly ascertainable, is forbidden. It is elementary that unless the obligation is unenforceable, the payment by a taxpayer of that part of his liability which he is willing to discharge confers no benefit upon the State beyond that which it was already entitled to receive. Therefore, if the Director were to accept less than the full amount of the taxes due it would benefit the taxpayer and not the State.

In the cases of *Guiteras' Estate,* 204 N. Y. S. 267, and *People* vs. *Westchester County,* etc., 231 N. Y. 465, the principle was enunciated that:

> "It is immaterial whether the funds are actually voted out of the State Treasury or are remitted by cancellation of a tax validly due but unpaid. The result is the same and the constitutional provision was intended to prohibit either form of diversion."

Our own New Jersey courts, in the case of *Wilentz* vs. *Hendrickson,* 133 N. J. E. 447, affd. 135 N. J. E. 244, laid down the principle:

> "Courts should not gradually emasculate or whittle away the beneficent provisions of the supreme law (Constitution). They must always be alert to detect and suppress all evasions of constitutional interdictions." (Paren. ours.)

In the instant case the corporation is privately owned and operated exclusively for gain. I therefore am of the opinion that if the Director were to cancel or remit any part of the taxes due he would be violating Article VIII, Section 3, paragraph 3 of the State Constitution.

Very truly yours,

BENJAMIN M. TAUB,
Deputy Attorney General.