

May 11, 1955.

MR. AARON K. NEELD, *Director,*
Division of Taxation,

State House,
Trenton, New Jersey.

MEMORANDUM OPINION P-11.

DEAR MR. NEELD:

You have requested an opinion concerning the running of interest on public utility franchise and gross receipts taxes under L. 1940, c. 5, as amended (R. S. 54:31-45, et seq.).

You inform us that there are presently pending before the Division of Tax Appeals petitions filed by the Atlantic City Transportation Company seeking review of the amount of franchise and gross receipts taxes assessed against it for the years 1951, 1952, 1953 and 1954.

Your letter puts the question as follows:

"... whether the taxes assessed for the years 1951 through 1954 bear interest from the dates when these taxes would ordinarily have become payable or whether no interest is chargeable until the entry of judgments on the appeals above mentioned."

More specifically, you state the question to be "whether section 54:31-58 suspends all interest charges in those cases involving appeals from assessments of franchise and gross receipts taxes."

In our opinion, it is clear that an appeal by a taxpayer of the amount of franchise and gross receipts taxes assessed against it does not toll the running of interest pending the final determination of such an appeal.

R. S. 54:31-58 provides as follows:

"The taxes payable by each taxpayer hereunder shall be and remain a first lien on the property and assets of such taxpayer on and after the date the same become payable, as herein provided, until paid with interest thereon, and the same shall be collected in the same manner and subject to the same discounts, interest and penalties as personal taxes against other corporations or individuals and the same proceedings now available for the collection of personal taxes against other corporations or individuals shall be applicable to the collection of the taxes hereby imposed and payable to any municipality."

The same section of the act does prevent interest from running pending certain appeals, by providing that:

"In case of an appeal from any apportionment valuation or apportionment or any review thereof in any court, the portion of any such tax not paid prior to the commencement of any such appeal or proceedings for review, shall not become payable until thirty days after final determination of such appeal or review and the certification or recertification of the apportionment, if required."

But, the very wording of this provision postponing the due date for subject taxes limits the operation thereof to appeals from apportionment and apportionment valuations. Such postponement is not made applicable to appeals from the amount of the assessment, which is the basis for the relief sought in the appeals now pending before the Division.

Only an aggrieved municipality is authorized to appeal the apportionment valuations (R. S. 54:31-53) and thus bring the postponement provision into operation.

Indeed, for the taxpayer to appeal the apportionment valuations or the apportionment would be fruitless for no matter what change was made in either, the amount of the tax assessed against the taxpayer would not be affected. Moreover, even if it desired to do so, the taxpayer would not be permitted to contest either the apportionment valuation or the apportionment. See *New Jersey Water Company v. Hendrickson*, 88 N. J. L. 595 (Sup. Ct. 1916); aff'd 90 N. J. L. 537 (E. & A. 1917).

The letter accompanying your request for this opinion indicates that there is a question as to the rate of interest to be charged on franchise and gross receipts taxes paid after the due date. As quoted above, R. S. 54:31-58 provides that these taxes shall be ". . . subject to the same . . . interest . . . as personal taxes . . ." This has reference to the interest rate on personal property taxes, for which a taxpayer is personally liable under R. S. 54:4-1, as amended.

The interest rate on such taxes is arrived at pursuant to R. S. 54:4-67 which states, inter alia:

"The governing body may also fix the rate of interest to be charged for the nonpayment of taxes or assessment on or before the date when they would become delinquent. The rate so fixed shall not exceed eight per cent per annum."

Thus, a resolution adopted in accordance with this provision operates to fix the rate of interest to be charged on franchise and gross receipts taxes paid after the due date.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General.

By: THOMAS L. FRANKLIN,
Deputy Attorney General.

May 16, 1955.

HON. ARCHIBALD S. ALEXANDER,
State Treasurer of New Jersey,

State House,
Trenton 7, New Jersey.

MEMORANDUM OPINION P-12.

Re: *Pension Fund Voucher Signatures*

DEAR MR. ALEXANDER:

We have your recent memorandum requesting our opinion as to whether the chairman of the board of trustees of a pension fund may "properly authorize the secretary of the board, or some other official of the board, to affix his signature by machine" to the pension fund vouchers.

The several statutes creating the State Pension Fund Systems vary somewhat in defining the powers and duties of the officers of the board of trustees or commissioners who are charged with the responsibility of administering the pension funds. Some statutes provide that all payments from the funds shall be made by the State Treasurer only upon "vouchers signed by the chairman and countersigned by the secretary of the board of trustees," (N. J. S. A. 43:15A-35), while others provide that all moneys paid out of the pension fund shall be paid by the State Treasurer upon warrants "signed by the president and secretary of said pension commission, or such other officers as the pension commission shall designate," (R. S. 43.7-19,