

APRIL 27, 1960

HON. JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-10

DEAR MR. KERVICK:

You have asked us to advise you whether a corporate taxpayer is required to include in his entire net income for the purpose of New Jersey Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.), the gain resulting from a sale or exchange of its assets pursuant to a plan of complete liquidation under Section 337 of the Internal Revenue Code where no gain or loss is recognized for Federal tax purposes.

You previously requested our opinion whether the gain realized by corporations subject to the New Jersey Corporation Business Tax Act is taxable to such corporations in either of the following two situations; i.e., first, where a parent corporation liquidates its wholly owned subsidiary and receives the latter's net assets having a present fair market value in excess of the tax basis of the parent's investment in the subsidiary, and pursuant to Internal Revenue Code of 1954, § 332, no gain is recognized for Federal income tax purposes; and secondly, where one corporation conveys all of its net assets to a second corporation, or to the latter's subsidiary, solely in consideration for the capital stock of the transferee which has a fair market value in excess of the tax basis of the transferor's net assets, and pursuant to Internal Revenue Code of 1954, § 368(a)(1)(c), no gain is recognized for Federal income tax purposes. In Attorney General's Formal Opinion 1960—No. 2, we advised you that such transactions do not give rise to "entire net income" within the meaning of the New Jersey Corporate Business Tax Act if they fall within the nonrecognition provisions of the Internal Revenue Code.

The reasoning of that opinion is applicable to your present query. Our conclusion is therefore the same, i.e., that a gain resulting from a sale or exchange of assets pursuant to a plan of complete liquidation under Section 337 of the Internal Revenue Code where no gain or loss is recognized for Internal Revenue tax purposes does not give rise to "entire net income" within the meaning of the New Jersey statute.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MURRY BROCHIN
Deputy Attorney General