

United States or any other organization affiliated therewith, such person shall receive such portion of his salary or compensation as will equal the loss he may suffer while on such active service."

Thus, this statute provides that an employee on active duty shall receive such portion of his salary *as will equal the loss he may suffer* while on such duty. The general problem is the method of computing the loss the employee may suffer. The precise question is whether to subtract his total military remuneration (basic military salary and allowances) from his salary prior to his entrance upon the military, or to subtract from such salary merely his basic military pay without including allowances.

It is clear that the rationale of the statute is to permit the employee entering active duty to maintain his status quo with respect to his finances. An employee who receives differential pay while on active duty based solely upon his basic military salary may receive a gross sum (consisting of basic military salary, military allowances and differential pay) in excess of that which he received before entering the military. Certainly, the intention of the Legislature in enacting R.S. 38:12-5 was not to provide a possible windfall to the employee entering active military service. On the contrary, the purpose of R.S. 38:12-5 is to protect the employee from any financial deficit he may suffer while serving on active military duty. Therefore, in order to equalize the loss an employee may suffer, differential pay should be based upon total military remuneration rather than solely upon basic military salary.

A definition of military pay is contained in National Guard Regulation 51, promulgated by the Federal National Guard Bureau, which establishes the Army National Guard Technician Program. Paragraph 14 of this regulation provides that differential pay may be given to technicians attending a military school. Differential pay is stated to be the difference between technician pay and military pay. Military pay is defined as *base pay plus allowances* which includes longevity, subsistence, quarters, special and hazardous duty pay.

In conclusion, it is our opinion that differential pay made pursuant to R.S. 38:12-5 must be based upon basic military salary plus all military allowances.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: STEVEN S. RADIN
Deputy Attorney General

December 12, 1961.

HONORABLE KATHARINE E. WHITE
Acting State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1961—No. 34

DEAR MRS. WHITE:

In the general election held in November 1960 the people of the State of New Jersey voted to adopt a constitutional amendment, as proposed by Senate Concurrent Resolution No. 12, filed June 8, 1960. This constitutional amendment provides:

"The Legislature may, from time to time, enact laws granting exemption from taxation on the real property of any citizen and resident of this State of the age of 65 or more years residing in a dwelling house owned by him which is a constituent part of such real property but no such exemption shall be in excess of \$800.00 in the assessed valuation of such property and such exemption shall be restricted to owners having an income not in excess of \$5,000.00 per year. Any such exemption when so granted by law shall be granted so that it will not be in addition to any other exemption to which the said citizen and resident may be entitled." (N.J. Const. (1947), Art. VIII, sec. 1, par. 4)

The Legislature implemented this constitutional amendment by enacting P.L. 1961, c. 9. In pertinent part this statute provides:

"Every person, a citizen and resident of this State of the age of 65 or more years, having an income not in excess of \$5,000.00 per year and residing in a dwelling house owned by him which is a constituent part of his real property, shall be entitled, on proper claim being made therefor, to exemption from taxation on such real property to an assessed valuation not exceeding \$800.00 in the aggregate, but no such exemption shall be in addition to any other exemption to which said person may be entitled."

You have requested our opinion as to the proper interpretation to be accorded to the term "citizen." In particular, you have asked whether a person, otherwise satisfying the requirements of the statute, would nevertheless be disentitled to the exemption because he is an alien. On July 5, 1961, the Attorney General by Formal Opinion No. 12, clarified certain aspects of P.L. 1961, c. 9. The precise questions which you now raise, however, were not considered in this opinion.

The word "citizen" as used in the constitutional amendment and in the statute does not appear in isolation but as part of a larger phrase, i.e., "citizen and resident of this State." So used, "citizen and resident of this State" is an adjective phrase which prescribes one set of conditions or qualifications which a claimant must fulfill in order to be entitled to the statutory tax exemption. Other constitutional and statutory prerequisites for the exemption, in addition to the requirement that a person be "a citizen and resident of this State," are that such a person must also be 65 years of age or more, have an income not in excess of \$5,000.00 per year and reside in a dwelling house owned by him which is a constituent part of his real property.

The concept of citizenship is broad and the term "citizen" has no precise or fixed meaning. A "citizen," for example, is not necessarily synonymous with or equivalent to a "resident," "inhabitant," "elector," "taxpayer" or "voter," although it is frequently used interchangeably with such words. 14 C.J.S. *Citizens*, § 1, p. 1129.

The terms "citizenship" or "citizen" also may involve the concept of dual citizenship. There is a recognized distinction between national citizenship and state citizenship. The United States Supreme Court in *United States v. Cruikshank*, 92 U.S. 542, 550, 551, 23 L. Ed. 588, 590, 591 (1875) stated:

"The people of the United States resident within any State are subject to two governments: one State and the other National; but there need be no conflict between the two. The powers which one possesses, the other does not. They are established for different purposes, and have separate

jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. * * * It is the natural consequence of a citizenship which owes allegiance to two sovereignties, and claims protection from both. The citizen cannot complain, because he has voluntarily submitted himself to such a form of government. He owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction."

The distinction between state citizenship and national citizenship was noted in *Harding v. Standard Oil Co.*, 182 Fed. 421, 424 (C.C.N.D. Ill., 1910), leave to appeal denied 219 U.S. 363 (1911), wherein it was stated:

"A person may be a citizen of a state but not of the United States; as, an alien who has declared his intention to become a citizen, and who is by local law entitled to vote in the state of his residence, and there exercise all other local functions of local citizenship, such as holding office, claiming the right to poor relief, etc., but who is not a citizen of the United States."

In *Halaby v. Board of Directors of University*, 162 Ohio St. 290, 123 N.E. 2d 3 (Sup. Ct. 1954) the Ohio Supreme Court was called upon to construe a statute which granted free tuition in the academic departments of universities located in municipalities to "citizens of such municipalities." The Board of Directors of the University of Cincinnati contended that United States citizenship was a prerequisite to municipal citizenship and that the plaintiff Halaby, not being a United States citizen, was not entitled to attend the University tuition free. The Court stated:

"It is apparent, however, from a study of legislation and court decisions, that, except where a citizen of the United States is referred to, a variety of meanings is loosely given to the term, 'citizen,' and that such use creates legal ambiguity. It is to be observed that the term, 'citizen,' is often used in legislation where 'domicile' is meant and where United States citizenship has no reasonable relationship to the subject matter and purpose of the legislation in question." (123 N.E. 2d at p. 5)

* * *

"In the opinion of this court, the fact that the plaintiff, as well as other residents of the city, must be a citizen of the municipality in order to qualify for free tuition to the academic department of the university can not disqualify him because he is not a citizen of the United States." (123 N.E. 2d at p. 7)

The Court noted an earlier Ohio decision, *State ex rel. Owens v. Trustees of Section 29*, 11 Ohio 24 (Sup. Ct. 1841) wherein the Court was called upon to construe a legislative enactment that "each and every denomination of religious societies, after giving themselves a name, shall appoint an agent who shall produce to the trustees a certificate containing a list of their names and numbers, specifying that they are citizens of said township; * * *." It was stated at page 27 of 11 Ohio:

"Here a question is raised as to the meaning of the word 'citizens,' as used in this connection. That this word does not always mean one and the same thing is clear. Thus we speak of a person as a citizen of a particular place, when we mean nothing more by it than that he is a resident of that place. When we speak of a citizen of the United States, we mean one who was born within the limits of, or who has been naturalized by, the laws of the United States. It can hardly be believed that the Legislature, in using the word 'citizen,' in this statute, intended to make a distinction between native or naturalized citizens, and resident aliens. * * *"

Other decisions and authorities have also drawn the distinction between United States citizenship and citizenship of a state or political subdivision of a state. E.g., *Smith v. Birmingham Waterworks Co.*, 104 Ala. 315, 16 So. 123 (Sup. Ct. 1894), reversed on other ground, 42 So. 10 (Sup. Ct. 1906); *Vachikinas v. Vachikinas*, 91 W. Va. 181, 112 S.E. 316 (Sup. Ct. of App. 1922); *Devanney v. Hanson*, 60 W. Va. 3, 53 S.E. 603 (Sup. Ct. of App. 1906); *McKenzie v. Murphy*, 24 Ark. 155 (Sup. Ct. 1863); *Petition of Sproule*, 19 F. Supp. 995, 997 (S.D. Cal. 1937); *City of Minneapolis v. Reum*, 56 Fed. 576, 580, 8th Cir. 1893); *Note*, 8 Ala. L. Rev. (1955), p. 175; *Stout, Privileges and Immunities of National Citizenship*, 14 Univ. of Pitts. L. Rev. (1952) p. 48.

The foregoing authorities indicate generally that a citizen of a state is one who is a permanent resident or inhabitant or domiciliary of a state, without necessary regard to his qualifications for United States citizenship. In contrast, "citizenship," in the sense that it describes the status of a citizen of the United States, has a more precise meaning, firmly established by the United States Constitution, Federal statutes and decisional law. Stated simply, a citizen of the United States is one who is born within the limits of or has been naturalized by the laws of the United States.

Both the constitutional amendment and P.L. 1961, c. 9 use "citizen" in the sense of state citizenship rather than United States citizenship. The constitutional amendment refers to "any citizen and resident of *this State*." The statute refers to "every person, a citizen and resident of *this State*." The adjective phrase "of this State" in each instance refers to and qualifies the word "citizen" as well as "resident." There is no reference in either the amendment or the statute to United States citizenship as such. Moreover, the legislative history of the enactments evinces a public concern for the economic plight of elderly and needy persons. The expressed purpose of the amendment and implementing legislation was to provide financial relief in the form of a tax exemption to such persons, frequently referred to in the public hearings as "senior citizens." Clearly, there was no intent to delimit the benefits of the proposed tax exemption only to residents of New Jersey who were citizens of the United States.

Examination of other enactments reveals that the Legislature, when it refers to national citizenship, as distinct from state citizenship, ordinarily uses the terms "United States citizenship" or "citizen of the United States." For example, the Constitution provides that the Governor shall be "a citizen of the United States" and a "resident of this State." N. J. Const. (1947), Art. V, sec. 1, par. 2. The Constitution further provides that "every citizen of the United States * * * who shall have been a resident of this State" in addition to other requirements, shall be entitled to vote. N. J. Const. (1947), Art. II, par. 3. In R.S. 44:1-24, the Legislature provided that a superintendent of welfare appointed by a county welfare board must "be a citizen of this State and of the United States." N.J.S.A. 18:13-4.1 provides that a citizen of any other country who has declared an intention of becoming "a United States citizen"

may be granted a teacher's certificate. With respect to the adoption of children, it is provided that an adoption action may only be brought by a person who, among other things, "shall be a citizen of the United States" or who shall have officially declared an intention to become a citizen of the United States. N.J.S.A. 9:3-22. Such examples can, of course, be multiplied.

In contradistinction, when the Legislature refers to State citizenship, it generally unmistakably so specifies. For example, it is provided that any two or more "citizens of the State" may by appropriate proceedings challenge the passage of legislation or participate in such proceedings. N.J.S.A. 1:7-4, 1:7-5. Under N.J.S.A. 2A:148-22, it is a high misdemeanor for any person to advocate or teach that "citizens of this State" should not aid, abet or assist the United States in prosecuting or carrying on war with enemies of the United States, and "citizen of this State" is defined to be "any person within the confines of this State." These illustrative enactments are entirely comparable to the constitutional amendment and P.L. 1961, c. 9, referring to "citizen * * * of this State."

It is thus clear from the very language of the constitutional amendment and the statute, the legislative history, and a comparison with other constitutional provisions and statutes that the Legislature did not intend to make United States citizenship a prerequisite to qualification for the tax exemption.

This construction of the constitutional amendment and statute is consistent with well-established State policy and, wherever possible, all statutes of the State should be construed in a manner which will contribute to and effectuate common public policy. *Modern Industrial Bank v. Taub*, 134 N.J.L. 260, 263 (E. & A. 1946); 3 Sutherland, *Statutory Construction* (3d, ed. 1943) §§ 5901, 5902. If the statute were construed to require United States citizenship as a qualification for the tax exemption, aliens would be disentitled to the benefits of the statute, although aliens who own property within a taxing district would be subject to property taxation in common with all other property owners. This result would be clearly inconsistent with R.S. 46:3-18 which provides:

"Alien friends shall have the same rights, powers and privileges and be subject to the same burdens, duties, liabilities and restrictions in respect of real estate situate in this State as native-born citizens. * * *"

Such a construction would also derogate from the professed purpose of the amendment and statute to provide a modicum of economic assistance to elderly and needy persons. Obviously a limitation of the benefits of the exemption only to United States citizens would not subserve the essential policy of this legislation. *Halaby v. Board of Directors of University*, *supra*; *In re Rueff's Estate*, 284 N.Y.S. 426, 430, 157 Misc. 680 (Sur. Ct. 1935), *aff'd* 292 N.Y.S. 183, 249 App. Div. 617 (Sup. Ct. 1936).

As indicated, state citizenship, in contrast to the established and settled meaning of United States citizenship, ordinarily involves the broad concepts of "domicile" or permanent "residence," the idea of a substantial and fixed connection or identification with the state and a participation in its functions *Harding v. Standard Oil Co.*, *supra*; *Halaby v. Board of Directors of University*, *supra*.

The term "citizen," as used in the statute in the sense of "State citizenship," is thus a broad, general term. Its meaning and understanding are encompassed and rendered more definite by the word with which it is juxtaposed, namely, "resident."

Cf. *Ford Motor Co. v. N. J. Dept. of Labor and Industry*, 5 N.J. 494 (1950); *D'Ippolito v. Maguire*, 33 N.J. Super. 477 (App. Div. 1955). The statute defines "resident" to mean "one *legally domiciled* within the State of New Jersey for a period of 3 years immediately preceding October 1 of the pretax year." This definition comports with and embraces the common understanding of the word "citizen" as one who is a permanent resident or legal domiciliary of the State. In fact, the statute goes on to provide that:

"Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State for the purposes of this act. Absence from this State for a period of 12 months shall be prima facie evidence of abandonment of domicile in this State."

Thus, a person who is a citizen of the State in the sense of being a permanent resident or domiciliary of the State may, nevertheless, fail to qualify for the exemption unless he is also a "resident" of the State in the precise manner specified by the statute, i.e., with a legal domicile within the State for at least 3 years immediately preceding October 1 of the pretax year.

For the foregoing reasons, we advise you that under constitutional amendment N.J. Const. (1947), Art. VIII, sec. 1, par. 4 and P.L. 1961, c. 9, a person who is not a United States citizen but who has been a domiciliary and resident for 3 or more years and is otherwise qualified under the statute, is entitled to the tax exemption provided therein.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: ALAN B. HANDLER
Deputy Attorney General

JANUARY 23, 1961

FREDERICK C. MCCOY, *Secretary*
Morris County Board of Taxation
Hall of Records
Morristown, New Jersey

MEMORANDUM OPINION—P-1

DEAR MR. MCCOY:

You have asked our opinion whether the statutory phrase, "the assessed value of [the taxpayer's] real property," which appears in the New Jersey Bank Stock Tax Act, R.S. 54:9-1 et seq., refers to the value fixed by the most recent real property assessment.

The New Jersey Bank Stock Tax Act imposes an annual tax on the "value" of each share of common stock of every bank having its principal place of business within this State. "Value" is defined by the statute to mean the amount of the "capital, surplus and undivided profits" of the bank, less certain deductions, including "the assessed value of its real property" and "the assessed value of all real property owned by a corporation, all the stock of which corporation is owned by such bank." R.S.54:9-4,