

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,

54:9-5 and 54:9-6. Although the Bank Stock Tax Act clearly indicates that a bank's "capital, surplus and undivided profits" should be assessed as of December 31st of the tax year, the statute does not expressly state what assessment date should be used to calculate the assessed value of the real property of a bank and of its wholly owned subsidiaries.

The value of the real property of a bank and its wholly owned subsidiaries as of either of two assessment dates could conceivably be used in computing the Bank Stock Tax. The assessed value of real property which is to be deducted from "capital surplus and undivided profits" in order to calculate the Bank Stock Tax payable with respect to 1959 could be either the real property assessment made as of October 1, 1958 or as of October 1, 1959. By January 10, 1960, the date by which a bank must file its statement for purposes of computing the Bank Stock Tax payable with respect to the year ending December 31, 1959, the local assessor has already made an assessment for the value of the real property of the bank with respect to the tax year 1960. R.S. 54:4-23. Although the local assessor is not required to file his complete assessment list with the county board of taxation until the January 10th following (R.S. 54:4-35), he must at least ten days before that filing accord to any taxpayer the opportunity of inspecting the assessment list for the purpose of ascertaining what assessment has been made against him or his property (R.S. 54:4-38). On the other hand, the real property assessment referable to the year 1959, the same year with respect to which the Bank Stock Tax is payable, would be the assessment made as of October 1, 1958. No compelling reason has been suggested for preferring one assessment date over another for purposes of computing the Bank Stock Tax, but it is, of course, essential that a single rule be consistently followed.

In choosing between the two possible assessment dates, it is of some significance that the assessment as of October 1, 1959 will not have become final by January 10, 1960. R.S. 54:4-35; 54:4-55. Furthermore, it would seem preferable from the standpoint of logic, or at least of symmetry, to use for purposes of computing the Bank Stock Tax payable with respect to 1959 the real property assessment which is intended to be used for computing the real property tax payable with respect to 1959, that is the real property assessment as of October 1, 1958.

There is another significant consideration which leads to the same result. In Attorney General's Formal Opinion, 1960—No. 20, we pointed out that the Financial Business Tax Law, N.J.S.A. 54:10B-1 et seq. was adopted in 1946 to avoid discrimination against national banks and that the Bank Stock Tax Act should be construed so as not to impose any greater tax upon banks subject thereto than is imposed by the Financial Business Tax Law upon competing financial businesses. N.J.S.A. 54:10B-1 et seq. imposes a privilege tax measured by net worth. The tax is payable on or before April 15 of each year for the privilege of "doing a financial business in this State" during that calendar year. N.J.S.A. 54:10B-6 provides that in computing the tax base, "there may also be deducted from net worth the assessed value of real estate taxable in this State; but such deduction shall not exceed the amount of the taxpayer's equity in such real estate which is included in net worth." In computing the deduction under N.J.S.A. 54:10B-6 the Corporation Tax Bureau which administers the Financial Business Tax Law has consistently used the assessed value of real property as of the assessment date next preceding the April 15 due date upon which the tax is payable. For example, the Financial Business Tax payable with respect to the calendar year 1959 is due on April 15 of that year; the assessed value of real property to be deducted from the taxpayer's net worth would be that as of October

1, 1958. It is possible that the use of different assessment dates for computing the tax bases under the Bank Stock Tax Act and the Financial Business Tax Law would discriminate against state and national banks. This possibility can be avoided if county tax boards use the same assessed valuation date for the purposes of computing the Bank Stock Tax as the Corporation Tax Bureau uses for computing the Financial Business Tax. That would mean that to compute the Bank Stock Tax payable on January 10, 1960 with respect to the calendar year 1959, the assessed value of real property deducted should be the assessed value fixed for the tax year 1959 as of October 1, 1958.

You are, therefore, advised that the statutory phrase "the assessed value of [the taxpayer's] real property" which appears in R.S. 54:9-1 et seq. refers to the valuation as of the October 1 preceding the commencement of the year with respect to which the Bank Stock Tax is payable.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: MURRY BROCHIN
Deputy Attorney General

JANUARY 26, 1961

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

MEMORANDUM OPINION—P-2

DEAR MR. KERVICK :

You have sought our advice concerning the proper procedure in allowing interest upon excess contributions of all members belonging to the Teachers' Pension and Annuity Fund. N.J.S.A. 18:13-112.22. In order to avoid misunderstanding we shall also direct in part our remarks to the proper procedure concerning return of veterans' contributions. N.J.S.A. 18:13-112.72(a).

It is our understanding that at the time of the enactment of the Teachers' Pension and Annuity-Social Security Integration Act, the administrative burden in processing refund applications was so great that there necessarily resulted lengthy delays in the completion of the program. Therefore, the question has arisen as to the propriety of allocating interest upon delayed refunds. The Board desires our legal direction concerning their actions in this regard.

N.J.S.A. 18:13-112.22 provides, in pertinent part:

"Any [excess] contributions made by a member * * * shall be refunded with regular interest to January 1, 1956 to the member * * * or shall, at his request, be used at retirement with regular interest, to provide an annuity of equivalent actuarial value * * *."