

ATTORNEY GENERAL

February 20, 1976

SIDNEY GLASER, *Director*
Division of Taxation
State and Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 7-1976

Dear Director Glaser:

You have asked for an opinion as to whether interest income received by an estate or trust from an exempt source is taxable to an individual taxpayer under the New Jersey Tax on Capital Gains and Other Unearned Income Act. Laws of 1975, c. 172. Unearned income is defined by the Act to mean and include income from an estate or trust pursuant to regulations promulgated by the Director of the Division of Taxation. The Act exempts from the tax "interest which the State is prohibited from taxing under the Constitution or the Statutes of the United States or on obligations of the State of New Jersey or its political subdivisions . . ." Section 2. Your specific inquiry is whether interest exempt under the Act maintains its character as it passes through from the estate or trust to the individual taxpayer.

In the statutory definition of unearned income to include income from an interest in an estate or trust, the Legislature has authorized the Director to promulgate regulations which shall be consistent with comparable provisions of the Internal Revenue Code and the regulations issued thereunder. Sections 2, 19. The Code provides that income shall have the same character in the hands of the beneficiary as in the hands of the estate or trust. Int. Rev. Code of 1954 §652(b), §662(b). Accordingly, for federal tax purposes exempt interest maintains its exempt character as it passes through from an estate or trust to an individual. See *Ellis v. United States of America*, 416 F. 2d 894 (6th Cir. 1969). It can be reasonably concluded that it was the legislative purpose that the Director apply this same pass through concept in his administration of the Act. You are therefore advised that interest income received by an estate or trust from exempt obligations under the Act maintains its exempt character and is not taxable to an individual taxpayer.

Very truly yours,

ROBERT J. DEL TUFO
Acting Attorney General

By: BARRY D. SZAFERMAN
Deputy Attorney General