

ATTORNEY GENERAL

\*\*However, it should be made clear that employee organizations may not negotiate time off with pay provisions for convention attendance or for other functions for employees in negotiating units represented by other employee organizations. A certified employee representative is authorized to serve as the exclusive representative for collective negotiations solely for those employees in the unit of whom it represents. N.J.S.A. 34:13A-5.3; see also *Lullo v. Intern. Assoc. of Fire Fighters, supra*. This is an established proposition in labor relations and needs no further elaboration.

October 1, 1976

SIDNEY GLASER, *Director*  
*Division of Taxation*  
Taxation Building  
Trenton, N.J.

FORMAL OPINION NO. 26—1976

Dear Director Glaser:

You have asked whether a general exemption of public pensions from any State tax set forth in various pension laws is applicable to the tax imposed under the New Jersey Gross Income Tax Act. For the following reasons, you are advised that a general exemption of public pensions, paid by this State, from any State tax is applicable to the New Jersey gross income tax.

All of the State administered retirement systems contain a specific statutory exemption from State or municipal taxation of the pensions and other benefits or rights accruing to pensioners in those systems.\* In its enactment of the Income Tax Act the Legislature generally included “[P]ensions and annuities to the extent that the proceeds exceed the contributions made by the taxpayer” within the category of taxable gross income, N.J.S.A. 54A:5-1(j). Accordingly, the question arises whether the Legislature intended in any way to alter or eliminate the preexisting exemptions enjoyed by public pensioners for purposes of the application of the Income Tax Act.

The Act does not contain an express repeal of the exemption from any state tax set forth in the retirement system statutes. Moreover, there is no indication of an implicit legislative purpose to eliminate these exemptions for purposes of the income tax. It is important to note that as an aid in discerning the legislative intention, a repeal by implication is not favored. *N.J. State P.B.A. v. Morristown*, 65 N.J. 160, 164 (1976). A legislative intent to repeal the existing exemption of these pensions from all state taxation should appear in unequivocal terms. *Cf. N.J. State P.B.A. v. Morristown, supra*, at 164. Accordingly, in this case it was the clear legislative purpose to allow the general exemption of these public pensions from all state taxation to apply as well to the New Jersey gross income tax.

This legislative design is reinforced by the enactment of specific exemptions for certain additional similar public pensions paid by the federal or state governments and their political subdivisions. For instance, all payments received under the federal Social Security Act or Railroad Retirement Act are excludable income. N.J.S.A. 54A:6-2, 3. Similarly, income received from federal or any state pension, disability

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or retirement program for persons not covered by Social Security or the Railroad Retirement Act is excludable to a specified maximum. N.J.S.A. 54A:6-12. The Legislature therefore provided for the exemption of certain additional public pensions from the purview of the Act and did not inferentially repeal the absolute exemption already set forth in the various state retirement system laws.

Moreover, the Legislature on its enactment of the Income Tax Law was familiar and conversant with its prior enactments, and in particular the well-known exemption of State public pensions from taxation. *Cf. New Ark Coop. Inc. v. Stalks*, 141 N.J. Super. 37 (Law Div. 1976). Its failure to include an express exclusion for State public pensions in the Income Tax Act was a result of its recognition of the already exempt status of these pension payments. You are therefore advised that the general exemption from all State taxes set forth in the various State pension laws is applicable to the New Jersey Gross Income Tax Act, and pension payments received from these sources are excludable from taxable gross income under the Act.

Very truly yours,

WILLIAM F. HYLAND

*Attorney General of New Jersey*

By: BARRY D. SZAFERMAN

*Deputy Attorney General*

\* See for example the Public Employee Retirement System at N.J.S.A. 43:15A-53 which provides in pertinent part:

"The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of this act and the moneys in the various funds created under this act, *shall be exempt from any State or municipal tax* and from levy and sale, garnishment, attachment or any other process arising out of any State or Federal court and, except as in this section and in this act otherwise provided, shall be unassignable." (Emphasis added)

Similar provisions are set forth in the Teachers' Pension and Annuity Fund, N.J.S.A. 18A:66-51; State Police Retirement System, N.J.S.A. 53:5A-45; Police and Firemen's Retirement System, N.J.S.A. 43:16A-17; Judicial Retirement System, N.J.S.A. 43:6A-41.