

FORMAL OPINION

for inheritance and estate taxes was enacted undoubtedly to clear up an ambiguity as to the tax treatment of State authority bonds under New Jersey death taxes, which taxes are by their very nature distinguishable from corporate franchise taxes.

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April 29, 1977

ROBERT E. MULCAHY, III  
*Commissioner*  
*Department of Corrections*  
P.O. Box 7387  
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Trenton, New Jersey 08625

FORMAL OPINION 1977 — No. 8.

Dear Commissioner Mulcahy:

You have inquired as to the proper method for the calculation of the actual parole eligibility dates and the minimum-maximum expiration dates for those State Prison inmates who subsequently receive an additional minimum-maximum term, concurrent in part with, and consecutive in part to, the commitment then being served by the inmate. You have also requested advice with respect to the manner in which commutation credit, N.J.S.A. 30:4-140, work and minimum security credits, N.J.S.A. 30:4-92, and the county jail custodial credit, R.3:21-8, are to be incorporated therein. Finally, you have questioned whether the additional fixed minimum-maximum term may be lawfully aggregated with life sentences or indeterminate sentences.

On April 1, 1959, then Attorney General Furman concluded that minimum-maximum sentences, which are imposed at different times by different courts and are concurrent in part and consecutive in part, may be aggregated pursuant to the authority contained in L.1956, c.102, §2, p. 476 (N.J.S.A. 30:4-123.10), with the consent of the inmate and the permission of the State Parole Board, *Memorandum Opinion 1959-P-4*. The Attorney General declared that the aggregated term commences as of the date of imposition of the first sentence, and that it is determined by adding to both the minimum and maximum terms of the second commitment order the amount of time which has elapsed between the sentencing dates. This computation principle does not, however, apply to aggregation of minimum terms where the expiration date of the recently imposed minimum term occurs prior to the expiration date of the previously-imposed minimum term. In such cases, the minimum sentence decreed in the first judgment of conviction remains controlling in the calculation of the aggregated minimum term.\*

The sound reasoning of the opinion concerning the aggregation of sentences which are concurrent in part and consecutive in part also pertains to the method for the computation of county jail custodial credits, R.3:21-8, county jail work credits, N.J.S.A. 30:8-28.1, and the work and minimum security credits provided for in N.J.S.A. 30:4-92. Sentences which are in character both concurrent and consecutive

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in relation to each other should be treated as a unified, single term of incarceration, without regard to the component parts thereof, once the inmate and the State Parole Board have acceded to aggregation. Accordingly, all remission credits earned or allowed on the service of the first sentence prior to the imposition of the second term should be applied in diminution of the new aggregated term of imprisonment.

Of course, an unwarranted duplication in the provision of otherwise allowable credits must be avoided upon aggregation. Where an inmate, who is serving a state prison commitment, is transferred to the temporary custody of county officials for detention in a county jail facility pending the trial on and the disposition of other criminal charges, the potential for credit replication exists. In this circumstance, the inmate is not entitled, upon conviction of and sentence for the new charges, to:

- (1) county jail custodial credits for the period of pretrial, presentence confinement in the county facility, since this would duplicate credit for time served on the state prison commitment during confinement in the county facility, Cf. *State v. Council*, 137 N.J. Super. 306, 308-309 (App. Div. 1975); *State v. Brandfon*, 38 N.J. Super. 412 (Cty. Ct. 1955) aff'd o.b. 40 N.J. Super 328 (App. Div. 1956);
- (2) a separate commutation credit allowance apart from the basic credit granted on the total aggregate term, for the period of county detention since otherwise there would be a duplication of the commutation credit allowance for the same period of incarceration, Cf. *Lipschitz v. State*, 43 N.J. Super. 522, 526-527 (App. Div. 1957).

In addition, work or minimum security credits should not be allowed where remission is not earned in accordance with the provisions of N.J.S.A. 30:4-92 or N.J.S.A. 30:8-28.1; *Zink v. Lear*, 28 N.J. Super. 515, 520 (App. Div. 1954).

Finally, it is clear that aggregation is permissible only where the respective sentences for which aggregation is sought bear both minimum and maximum terms. Any minimum-maximum sentence, to be served following a discharge upon a life sentence, may not be aggregated with a life sentence under the provisions of N.J.S.A. 30:4-123.10. Inmates serving indeterminate rehabilitative sentences, which are imposed upon juvenile delinquents, N.J.S.A. 2A:4-61h., defendants who fall within the purview of the Sex Offender Act, N.J.S.A. 2A:164-6b., and youthful offenders, N.J.S.A. 30:4-148, 155, *State v. Chambers*, 63 N.J. 287 (1973), are also barred from applying for aggregation of such terms with a minimum-maximum commitments.

Therefore, you are advised that:

- (1) the minimum and maximum limits of an aggregated sentence, where the base terms are concurrent in part and consecutive in part, are determined by adding to both the minimum and maximum terms of the second or subsequent commitment order the amount of time which has elapsed between the respective dates of sentence, subject to the exception noted above in the computation of aggregated minimum terms;
- (2) the actual parole eligibility date is to be calculated pursuant to the provisions of N.J.S.A. 30:4-123.10 or N.J.S.A. 30:4-123.12, whichever is applicable, on the basis of the total aggregated minimum or maximum term;
- (3) commutation credits are to allowed against the total length of the aggregated minimum and maximum terms of incarceration or the parole eligibility base term, in accordance with the schedule set forth in N.J.S.A. 30:4-140;
- (4) all county jail, work and minimum security credits provided or earned

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in remission of either commitment order are to be attributed against the total aggregated term of incarceration and the parole eligibility base terms; (5) minimum-maximum sentences, which are concurrent in part with and consecutive in part to life sentences or indeterminate commitments, should not be aggregated with those sentences.

Very sincerely yours,

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\* A hypothetical will illustrate the proper method for the aggregation of such sentences. It is assumed for purposes of clarity in the examples that the inmate has not been granted parole and does not receive county jail, commutation, work or minimum security credits in remission of his sentences.

An inmate receives a five (5) to seven (7) year term in Bergen County on March 1, 1975. The maximum term of that sentence would not expire until March 1, 1982. After serving two years of the sentence in confinement, the inmate receives an additional sentence in Essex County of eight (8) to ten (10) years on March 1, 1977. The court does not specify that the commitment is to be served consecutively to the first sentence. Consequently, the term is assumed to be concurrent since a sentence commences upon date of imposition thereof. *In re Sabongy*, 18 N.J. Super. 334, 346 (Ct. Ct. 1952). Execution of the second order of commitment commences as of March 1, 1977, and would not terminate until March 1, 1987. Upon exercise of the right to aggregation the inmate is deemed to be serving a total minimum term of ten years duration and a total maximum term of twelve years duration. This aggregated term is the product of: (1) the minimum term (8 years) and the maximum term (10) years, as imposed in Essex County on March 1, 1977, and (2) the amount of time which has elapsed between the respective dates of sentencing. Accordingly, the curtailment of the inmate's liberty is initiated on March 1, 1975, the date of imposition of the first sentence, and is concluded on March 1, 1987, the expiration date of the second sentence. The service of two sentences will be concurrent in part (March 1, 1977 to March 1, 1982) and consecutive in part (after March 1, 1982).

If, however, the inmate had received a two (2) to ten (10) year sentence in Essex County on March 1, 1977, the former minimum term, imposed in Bergen County of March 1, 1975, would control in the event of aggregation. The aggregated maximum term would not be affected. Under that circumstance, the inmate is deemed to be serving a total minimum term of confinement of five (5) years duration, which commences on March 1, 1975, and a total maximum term of twelve (12) years duration, which expires on March 1, 1987.

Furthermore, commutation time for good behavior as provided in N.J.S.A. 30:4-140 should be calculated on the period which is the aggregate maximum of the combined maxima of the sentences described, assuming the inmate consents to the aggregation, *Memorandum Opinion 1959-P-4*. Thus, under this hypothetical the inmate would receive the good department credit allowance for a minimum sentence of 10 years (966 days) or a minimum sentence of five years (444 days), and for a maximum sentence of 12 years (1236 days), see *Attorney General Formal Opinion No. 16-1976*.