

FORMAL OPINION

civil service practices, should conduct an investigation to determine the continuing need for those positions and the appropriate civil service tenure, seniority and demotional rights of occupants of those positions.⁴

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: THEODORE A. WINARD
Assistant Attorney General

4. In a statement of the Senate, State Government, Federal and Interstate Relations Committee and the Veterans Affairs Committee, it is stated that the application of the provisions of the State Agency Transfer Act would grandfather in present employees of agencies whose functions are being transferred to the new Office of Administrative Law and that "grandfathering" would be inclusive of those employees presently serving as hearing officers. In our judgment, this statement of these Committees has no support in either the terms or purposes of the enactment. We cannot accept the same as conclusive of the overall legislative intent.

March 2, 1979

SIDNEY GLASER, *Director*
Division of Taxation
Taxation Building
West State & Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 5—1979

Dear Director Glaser:

You have asked for our opinion as to whether pension income received by a non-resident of New Jersey from a public or private pension plan is subject to the Gross Income Tax Act. For the reasons set forth below, you are advised that such pension income is subject to the Tax Act.*

N.J.S.A. 54A:2-1 provides for imposition of the tax upon every individual's "New Jersey gross income as herein defined . . ." subject to certain deductions, limitations and modifications set forth in the act. The term "gross income" is defined in N.J.S.A.54A:5-1(j) to include

pensions and annuities except to the extent of exclusions in section 54A:6-10 hereunder, notwithstanding the provisions of [the sections of public pension laws which provide an exemption of such benefits from state taxation]. . . .

* The particular inquiry which prompted this request concerns non-resident retired teachers receiving pensions from the Teachers Pension and Annuity Fund. The Fund is a public State administered pension plan created pursuant to N.J.S.A. 18A:66-1 *et seq.*

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It is clear, therefore, that the Legislature has imposed the tax upon all pension and annuity income. The only question is whether a pension income recipient is exempted from the income tax because he or she is no longer a resident of New Jersey.

With respect to non-residents, the Tax Act specifically provides that:

The income of a nonresident individual shall be that part of his income derived from sources within this State as defined in this act. [N.J.S.A. 54A:5-5.]

“Income derived from sources within New Jersey” is, in turn, defined to include:

compensation, net profits, gains, dividends, interest or income enumerated and classified under chapter 5 of this act to the extent that it is earned, received or acquired from sources within this State:

* * *

2. In connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; . . . [N.J.S.A. 54A5-8.]

Since pension income is “income enumerated and classified under Chapter 5”, and since pension benefits received from a public or private pension plan for work performed in New Jersey are attributable to a profession or occupation carried on within New Jersey, such pension income is “income derived from sources within New Jersey” and is subject to the income tax.

Accordingly, you are advised that pension income received by non-residents from a public or private pension plan in New Jersey is subject to the New Jersey Gross Income Tax Act.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DOUGLAS G. SANBORN
Deputy Attorney General
