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220, 224 (App. Div. 1976); *N.J. Prop.-Liab. Ins. Guar. Co. v. Sheeran*, 137 N.J. Super. 345, 351 (App. Div. 1975) *certif. den.* 70 N.J. 143 (1976). Thus, since the authority conferred on prison officials to declare a forfeiture of commutation credits is an aspect of their ability to maintain prison discipline, we can reasonably assume that the legislature intended to confer concomitant authority on those prison authorities to restore commutation credits in those cases where the interests of prison management and discipline are similarly served.

In conclusion, it is our opinion that the existing administrative practice permitting the restoration of commutation credits previously forfeited under N.J.S.A. 30:4-140 is within the authority of prison officials where the same is implemented in a manner that is neither arbitrary nor capricious and is consistent with the best interests of the inmates and prison management and discipline.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: EUGENE M. SCHWARTZ
Deputy Attorney General

May 4, 1979

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

FORMAL OPINION NO. 9—1979

Dear Director Glaser:

You have asked for our opinion as to whether temporary disability benefits received by an employee from either the "State Plan"¹ or a "private plan"² established pursuant to the Temporary Disability Benefit Law, are excludable from gross income under the New Jersey Gross Income Tax Act. For the reasons set forth below, you are advised that such benefits are excludable from gross income.³

N.J.S.A. 54A:2-1 provides in pertinent part that:

There is hereby imposed a tax for each taxable year . . . on the New Jersey gross income as herein defined of every individual . . . , subject to the deduction, limitations and modifications hereinafter provided. . . .

"Gross income" is defined in N.J.S.A. 54A:5-1:

New Jersey gross income shall consist of the following categories of income:

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a. salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property. . . .

Temporary disability benefits received from a private plan or the State Plan are within the ambit of "gross income" as defined in the Tax Act, since the right to such benefits arises by virtue of the employee's employment, and since such benefits are funded and/or paid (at least in part) by the employers. Unless specifically excluded by N.J.S.A. 54A:6-1 through 6-15, such benefits are subjected to tax under N.J.S.A. 54A:5-1.⁴ N.J.S.A. 54A:6-1 provides that:

1. The Temporary Disability Benefits Law, N.J.S.A. 43:21-25 *et seq.*, provides for the establishment of a state disability benefits fund, in which contributions of employers and employees are deposited. N.J.S.A. 43:21-46(a). The state disability benefits fund is in the custody of the State Treasurer, and is held in trust for the payment of temporary disability benefits. Such benefits are payable to "covered individuals" as defined in N.J.S.A. 43:21-27(b) in certain circumstances set out in the Law. *See* N.J.S.A. 43:21-37 through 42. This form of disability coverage is referred to as coverage under the "State Plan."

2. As an alternative to contributing to the State Plan, an employer may, under certain circumstances, establish a private disability plan for its employees, which plan is subject to review by the Division of Employment Security. A private plan must, in effect, provide benefits to employees which equal or exceed the benefits provided by the State Plan, without requiring that the employees contribute more than they would be required to contribute under the State Plan. N.J.S.A. 43:21-32.

3. It has been suggested that N.J.S.A. 54A:6-13, which provides an exclusion for "all payments and benefits received under any unemployment insurance law," could be construed to provide an exclusion for temporary disability payments received under N.J.S.A. 43:21-25 *et seq.* Although it is true that the Temporary Disability Benefits Law is a supplement to the Unemployment Compensation Law, N.J.S.A. 43:21-1 *et seq.*, and is codified as Article 2 of the "Unemployment Compensation" Chapter (Chapter 21) of Title 43, Subtitle 9, the Benefits Law itself recognizes that there is a difference between an unemployment compensation law and a disability benefit law. N.J.S.A. 43:21-30 provides:

No benefits shall be required or paid under this act for any period with respect to which benefits are paid or payable under any unemployment compensation or similar law, or under any disability or cash sickness benefit or similar law, of this State or of any other state or of the Federal Government. . . .

And, the Act itself is entitled "Temporary Disability Benefits Law," N.J.S.A. 43:21-25, to be distinguished from the "Unemployment Compensation Law," N.J.S.A. 43:21-1. Furthermore, other states' temporary disability laws may or may not be codified as an "unemployment compensation" law, and there does not appear to be any reason or intent to treat such payments differently for purposes of the Tax Act. Accordingly, although N.J.S.A. 54A:6-13 (like N.J.S.A. 54A:6-6(a)) supports our conclusion that this type of benefit was intended to be excluded, that section cannot reasonably be read to provide the exclusion.

4. That such benefits would be subject to tax under N.J.S.A. 54A:5-1 is fully consistent with, indeed supported by, the specific exclusions from gross income of federal social security benefits (N.J.S.A. 54A:6-2), railroad retirement benefits (N.J.S.A. 54A:6-3), and unemployment insurance benefits (N.J.S.A. 54A:6-13).

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The items in sections 54A:6-2 to 54A:6-9, inclusive, shall be specifically excludable from gross income.

N.J.S.A. 54A:6-6 provides an exclusion for:

Compensation for injuries or sickness.

a. Amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

b. The amount of damages received, whether by suit or agreement, on account of personal injuries or sickness.

c. *Amounts received through accident or health insurance for personal injuries or sickness.*

d. Amounts received as a pension, annuity or similar allowance for personal injuries or sickness resulting from active service in the armed forces of the United States or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the Foreign Service Act of 1946. [Emphasis added.]

This exclusion provision is essentially similar to §104 of the Internal Revenue Code ("I.R.C."); that exclusion provision, entitled "Compensation for injuries or sickness," reads as follows:

- (a) In general.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include—
- (1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;
 - (2) the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness;
 - (3) *amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee. or (B) are paid by the employer); and*
 - (4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended. [22 U.S.C. 1081; 60 Stat. 1021.] [Emphasis added.]

In view of the substantial similarity of these provisions which provide exclusions from taxable income, as well as several others,⁵ it may be reasonably assumed that the Legislature was aware of these exclusions in the Internal Revenue Code and intended to specifically incorporate them

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into the tax act. It is appropriate, therefore, to look to §104 of the I.R.C. as an aid in interpreting N.J.S.A. 54:6-6. See 2A Sutherland, *Statutory Construction*, §52.02 at 328-329 (4th Ed. 1973).

§104(a)(3) of the I.R.C. provides an exclusion for "amounts received through accident or health insurance." for purposes of §104(a)(3), that term includes "amounts received from a sickness and disability fund for employees maintained under the law of a state. . . ." §105(e) of the I.R.C.⁶ Thus, under the Internal Revenue Code the exclusion of "amounts received through accident or health insurance" has been applied to temporary disability benefits payments received, whether from the employer or the employer's plan, from an insurance company, or from [a] State fund. . . ." See Rev. Rul. 75-479, 1975-2 CB 44 and Rev. Rul. 75-499, 1975-2 CB 43; amplifying Rev. Rul. 72-191, 1972-1 CB 45. Since N.J.S.A. 54:6-6(c) was patterned after §104(a)(3), the likely legislative intent was the temporary disability benefits received from the State Plan or a private plan are amounts received from "accident or health insurance" and excludable from gross income under the Tax Act. On the other hand, since the Legislature did not incorporate a limitation on the exclusion with regard to amounts attributable to contributions by an employer as set forth in section 104(a)(3),⁷ we conclude that it intended to exclude the entire amount of temporary disability benefits from gross income under the Tax Act.

In conclusion, you are advised that temporary disability benefits received from the State Plan or a private plan are excludable from gross income under the Tax Act.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: DOUGLAS G. SANBORN
Deputy Attorney General

5. The following exclusion provisions of the Tax Act and the I.R.C. are also substantially identical: N.J.S.A. 54A:6-4 and I.R.C. §101; N.J.S.A. 54A:6-5 and I.R.C. §102; N.J.S.A. 54A:6-7(b) and I.R.C. §113; N.J.S.A. 54A:6-8 and I.R.C. §117.

6. Even prior to the inclusion of §105(e) in the I.R.C., the Supreme Court of the United States held that temporary disability payments received from an employer's plan were receipts from "health insurance" as that term was used in the exclusion provision which antedated §104(a)(3). *Haynes v. United States*, 353 U.S. 81, 77 S. Ct. 649, 1 L. Ed. 2d 671 (1957).

7. §104(a)(3) limits the exclusion to amounts

[O]ther than [those] received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer.