

Opinion No. 58-50

March 11, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker, Chief Assistant Attorney General

TO: F. E. McCulloch, Director, Income Tax Division, Bureau of Revenue, Capitol Building, Santa Fe, New Mexico

QUESTION

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Is retirement compensation received by Federal Civil Service employees subject to the New Mexico State income tax?

CONCLUSION

No.

OPINION

ANALYSIS

In connection with this matter, you have forwarded to us for our consideration a memorandum from counsel for the Bureau of Revenue which analyzes the above question and concludes that the retirement pay of Federal Civil Service personnel is to be excluded from gross income under the provisions of the New Mexico State Income Tax Law. This office agrees with such conclusion and adopts it in this opinion.

Specific reference is made to the provisions of § 2-15-5, which provides for certain deductions allowable in ascertaining net income as defined by the statute. These deductions include the following:

"(4) Any amount received through accident or health insurance or under Workmen's Compensation Acts or under any plan for employee's pensions, disability benefits or death benefits, as compensation or pension for personal injuries or sickness, disability or superannuation, and the amount of any damages received, whether by suit or agreement, on account of any injury, sickness or death."

Our attention has also been called to the provisions of Article 5 (e) of the regulations of the Bureau, as amended effective October 14, 1954, as follows:

"Art. 5 (3). FEDERAL COMPENSATION, PENSIONS, ETC. -- The Act provides that pensions, family allotments and allowances under the provisions of the war risk

insurance and vocational rehabilitation act of the World War Veterans' Act, or as pensions or bonuses from the United States for services rendered by the beneficiary, or another in the military or naval forces of the United States in time of war, or as a State pension for services rendered by the beneficiary or another for which the State is paying a pension or bonus, are to be excluded from gross income. Appropriations made by the New Mexico State Legislature for pension, gratuities, etc., for longevity of service of State employees, or for disability or death allowances of such employees, shall be excluded from gross income.

Retirement pay of all kinds, toward which the recipient made no contribution, by way of actual participation in a retirement plan, of a portion of his regular remuneration already taxed in the normal manner in the year earned (other than the performance of his services) shall be included in gross income."

The Bureau's regulation pursuant to § 72-15-5 (4) is also material:

"Art. 5 (d). ACCIDENT AND HEALTH INSURANCE POLICY PROCEEDS, PENSIONS, ETC. -- Any amounts received by an insured or his estate or other beneficiaries through accident or health insurance or under Workmen's Compensation Acts or under any plan for employees' pension, disability benefits or death benefits, as compensation or pension for personal injuries or sickness, disability or superannuation, and the amount of any damages received, whether by suit or agreement on account of any injuries, sickness or death are excluded from the gross income of the insured, his estate, and other beneficiaries."

In the opinion of this office the statutory provision of § 72-15-5 (4) is determinative of the question presented. By that provision, it appears that the Legislature clearly intended that any amount received under any plan for employees' pensions as compensation or pension for superannuation is to be excluded in the computation of gross income.

Under the New Mexico Retirement Act as now effective (§ 5-5-1 et seq.), it is specifically provided in § 5-5-21 that benefits paid to state officers and employees as retirement compensation shall be exempt from State income tax. We think that under the State Income Tax Law, Federal Civil Service employees, who contribute to a retirement fund from which the retirement compensation is paid, are in no worse position than State employees.