

Opinion No. 54-6016

September 15, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. William J. Malloy Director State Income Tax Division Santa Fe, New Mexico

{*479} In your letter dated July 13, 1954, you request our opinion concerning liability for State Income Tax of persons receiving retirement pay from the military services. You also state that this is genuine retirement pay received upon completion of twenty years or more service with the armed forces, and is not to be confused with disability benefits, war widow pensions and other gratuities.

Section 76-1205 of the 1941 Compilation, pocket supplement, provides in part as follows:

"The following deduction shall be allowed in ascertaining net income:

"(5) Amounts received as pensions, family allotments, and allowances under the provisions of the war risk insurance and vocational rehabilitation acts 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."

The type of gratuities contemplated under this subsection is not the same as retirement pay which is considered as compensation for services {*480} rendered and has been so construed in connection with the Federal Tax liability in **Hoepell vs. Westover**, 79 Federal Supplement 794. The same general principle has been followed in **Commissioner of Corporations and Taxation vs. Hale**, 53 N.E. 2d 675, 315 Mass., 556, and in **Everett vs. Commissioner of Corporations and Taxation**, 59 N.E. 2d 186, 317 Mass. 612. The general statement of the law relating to retirement pay appears in Section 1097, Subsection (d) "Taxation" in Vol. 85 C.J.S. as follows:

"Ordinarily a pension or retirement allowance paid to a former employee because of past services is a form of compensation for personal services which constitutes taxable income to the recipient."

In view of the language in the statute and the foregoing authorities, it is our opinion that retirement pay of military personnel is subject to the New Mexico State Income Tax, the same as any other type of compensation for services rendered.

By: C. C. McCulloh

Assist. Attorney General