

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 025

June 23, 1958

DEATH BENEFITS: STATE RETIREMENT SYSTEM; DEATH IN LINE OF DUTY

Syllabus:

Special death benefits paid to a widow under the State Retirement System which results from death incurred in the line of duty are not taxable to the widow, except insofar as it may include an annuity for additional contributions.

Advice is requested as to whether the special death benefit paid to a widow under section 21364 of the State Employees' Retirement Act is taxable to the widow. The "special death benefit" is payable in certain cases for death incurred in the line of duty.

Section 17138 of the Personal Income Tax Law excludes from gross income amounts received under workmen's compensation acts. A similar Federal provision has been construed to exclude payments which are in the nature of or in lieu of workmen's compensation (IT 3917, 1948-2 CV 10; IT 3877, 1947-2 CB 15).

The death allowance payable to widows or children under section 21364(a) and (b) of the State Retirement Act is in lieu of workmen's compensation which may be paid on account of the death of a city policeman or fireman (Section 1855, Labor Code). A similar provision applies with respect to members of the California Highway Patrol (Sec. 4805, Labor Code).

In the instant case amounts paid under section 21364(a) and (b) are in the nature of and in lieu of workmen's compensation and are, therefore, excludable from gross income.

With respect to amounts received as an annuity for additional contributions voluntarily made by a member over and above his normal contributions, it is my opinion that such annuities are not in the nature of or in lieu of workmen's compensation, but are similar to purchased annuities and should be taxable as such.