

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 058

June 27, 1958

RESIDENTS: CHANGE OF STATUS: PENSIONS

Syllabus:

The taxability of pensions received by a resident who performed the services resulting in the pension in another state or country prior to becoming a resident of California is discussed.

Advice is requested as to the taxability of pensions received by a resident who performed the services resulting in the pension in another state or country prior to becoming a resident of California. Advice is requested from the standpoint of (1) a gratuitous pension, (2) a pension paid out of current earnings of employer based on a contract between an employer and employee, and (3) a pension paid from a fund established by contributions made by the employer, or by the employer and the employee.

Under section 17596 of the Personal Income Tax Law taxability of income and deductions accrued prior to a change of residential status is not affected by such a change. Thus, if income from outside sources accrues to a taxpayer while he is a nonresident and he subsequently becomes a resident, such income is not includible in his resident tax return, but is considered the income of a nonresident from outside services, and as such, nontaxable. The problem arises in determining what part of a pension, if any, accrues in this sense prior to a taxpayer's becoming a resident. In Appeal of Dr. Tydeman, State Board of Equalization, 1/5/50, it was held that all amounts standing to his credit upon changing from a nonresident to a resident were to be considered as having accrued prior to the change for the reason that under the plan these amounts had become his property though subject to termination of employment. In view of this decision, any amounts which can be said to have become the property of the employee and which could be claimed upon termination of employment are to be considered as having accrued for the purpose of section 17596. However, the Franchise Tax Board does not go beyond this doctrine in excluding pension payments from gross income and prospective pension payments do not come within the term "accrued" as used in section 17596.

Therefore, the following conclusions result:

1. Pensions are not excludable from gross income merely because they may be attributable to services performed outside California at a time when the taxpayer was a nonresident.

2. Assuming the pension does not fall within a totally nontaxable or exempt category, the following amounts are excludible from gross income as having accrued to a nonresident prior to his becoming a resident.

(a) Amounts such as those involved in the Tydeman appeal to the extent payable to the employee if he were to terminate his employment prior to becoming a resident.

(b) If the taxpayer retired prior to becoming a resident, all pension payments from outside sources payable to him or to which he was entitled prior to his becoming a resident.

3. Where the pension is being reported as an annuity under section 17101, care must be taken to exclude from taxation the nontaxable amounts which may have accrued under 2 (a) and 2 (b), above, while taxpayer was a nonresident.

The reference to gratuitous pensions concerns those which are granted to an employee without any legal obligation or contract requiring the payments. Normally, such pensions are taxable because of the services previously rendered. However, under certain circumstances it is possible that a gratuitous pension may properly be considered a gift, and nontaxable. This depends upon the facts of the particular case.