CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 068

June 27, 1958

STATE EMPLOYEES' RETIREMENT SYSTEM: LUMP-SUM PAYMENTS

Syllabus:

A lump-sum payment received under the State Employees' Retirement System by a state employee, or his beneficiary, upon separation from service is a gain from the sale or exchange of a capital asset held for more than two years, but not for more than five years.

Advice is requested whether lump-sum payments received by an employee, or his beneficiary, under the State Employees' Retirement System upon separation from service is considered to be ordinary income or capital gain.

An examination of the State Employees' Retirement Law establishes that it satisfies the requirements of Section 17501. The percentage of employee participation is adequate; there is no discrimination in favor of upper-level employees; the funds are kept separate from other funds by the State Treasurer for the exclusive and sole purpose of paying the benefits of the system; and the operation of the fund is as a trust fund with investments in interest-bearing securities. Therefore, that amount in excess of the employee's contribution should be as the sale of a capital asset held for more than two years but less than five years.