

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 097

June 26, 1958

GROSS INCOME: PENSION FUND DEDUCTIONS: DISABILITY PAYMENTS

Syllabus:

Employee contributions to the City of Los Angeles pension plan by policemen and firemen and disability payments to such employees are not includible in their gross income.

Advice is requested whether the following are includible in the employees gross income:

(1) Policemen and firemen of the City of Los Angeles are required to participate in a pension plan whereby 6 percent of their salaries is withheld and paid into a pension fund. The employees rights are forfeitable, i.e., there is no refund of their contributions in the event they leave the service prior to becoming eligible for retirement.

(2) Section 24 of City Ordinance No. 89935 provides that a policeman or fireman who becomes disabled in the course of his duties shall receive as compensation an amount equal to his base salary for a period not in excess of one year.

(1) Regulation 17101 (d)(1) provides that the entire amount of an employee's salary must be included in his gross income even though some portion thereof is deducted for the purpose of building a pension fund. This follows from the general principle that where an employer is under an obligation to pay the employee a stipulated amount and part of the amount is, on order of the employee, paid into a pension fund, such amounts are constructive compensation to the employee and taxable in the year so constructively received.

However, this principle has no application to the instant situation where the employee's participation in the retirement system is compulsory and his rights therein forfeitable. There can be no constructive receipt because the money is not subject to his unqualified demand, either at the time he is paid his current salary or at any time prior to his becoming qualified for retirement. Consequently, the 6 percent withheld from salaries is not includible in gross income.

(2) Payments pursuant to Section 24 of Los Angeles Ordinance No. 89935 are in discharge of the city's obligation under Division IV of the Labor Code (the California workmen's compensation law) and the recipient is not entitled to any other award for either temporary or permanent disability unless such disability continues beyond one year. Therefore, the ordinance is a "workmen's compensation" act and the payments thereunder are excludable from gross income under Section 17138 of the Personal Income Tax Law.