

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 137

June 25, 1958

ANNUITIES: COST: EMPLOYERS CONTRIBUTION

Syllabus:

All employer contributions in respect to personal services rendered outside California are includible as part of taxpayer's cost, if the employee's interest in the annuity becomes nonforfeitable prior to his residence in California.

Taxpayer worked in various foreign countries for a New York firm from 1917 to 1946. Taxpayer retired in 1946 and became a California resident in 1947. At the date of his retirement taxpayer became entitled to annuity payments. Both taxpayer and his employer had contributed to the cost of the annuity. Advice is requested as to what extent taxpayer may use employer contributions in establishing the cost of his retirement annuity.

The employer contributions were additional compensation to the employee for personal services rendered outside California. If the employee has an irrevocable right to receive them prior to the time he becomes a resident of California, they "accrue" within the meaning of section 17596. Hackett v Comm., 159 F2d 121, held employer contributions to a nonforfeitable annuity plan as income to the employee in the year of contribution. The court stated that although there was no constructive receipt of income in such a case, the employee had received an economic benefit which was the equivalent of cash. Therefore, employer annuity contributions which were made with respect to personal services rendered by a nonresident outside of California "accrue" within the meaning of section 17596 prior to the California residence, if the annuity becomes nonforfeitable prior to that date. The taxpayer may accordingly include such contributions in the cost of the annuity for purposes of computing the taxable and nontaxable portions under section 17101.