

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 178

February 14, 1956

GROSS INCOME: DISABILITY SALARIES AND DISABILITY PENSIONS PAID BY CITY

Syllabus:

Firemen and policemen are not taxable on disability pensions or salaries paid to them during periods of disability if the payments are in the nature of and in lieu of workmen's compensation insurance.

Advice has been requested as to whether salary payments paid by the City of Oakland to its firemen and policemen during periods of disability or under disability pensions constitute taxable income. It is hereby ruled that such payments are not taxable.

Section 17138(a)(1) of the Personal Income Tax Law of 1955 provides that gross income does not include amounts received under workmen's compensation for personal injury or sickness. The exclusion also applies where compensation received is in the nature of and in lieu of workmen's compensation insurance. Webster R. Frye, et al v U.S., 72 Fed Supp., 405; I.T. 3877, I.R.B. 1947-2, p. 15. The above ruling is based on the conclusion that the terms of the Charter of the City of Oakland authorizing these payments treat the payments as being in the nature of and in lieu of workmen's compensation insurance.

The Charter of the City of Oakland in part provides that the Council shall allow a member of the police or fire department injured while in the performance of his duty full pay during the continuance of his disability, or until such time as he may be retired on a pension. The Charter further provides that any payments received under Division IV of the Labor Code (Workmen's Compensation and Insurance), shall be applied as a credit and set-off against any payment on account of salary, pension or other benefit payable under this Chapter. Sections 92 1/2, 96b, 100 1/2, 104b and 172 of Article XIV of the City Charter. In view of these provisions it is concluded that the payments here involved are in the nature of workmen's compensation insurance and nontaxable to the recipients under Section 17138. This is in accord with a private ruling memorandum of the Director of Internal Revenue, dated August 27, 1954.

If at some future date the City elects to require its firemen and policemen to become members of the State Employees' Retirement System, payments received during the first year of injury or sickness may be considered to represent compensation received during a leave of absence and accordingly fully taxable. See: Glen E. Balckburn, 15 TC 336.