

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 042

June 25, 1958

GROSS INCOME: TIPS

Syllabus:

Waiters tips are includible in the recipients gross income for personal income tax purposes.

Advice is requested as to whether tips received by a waiter are includible in his gross income for personal income tax purposes.

The nature of tips as compensation for personal services and includible in gross income was definitely established for Federal income tax purposes in Roberts v Commissioner, 176F 2d 221. Federal and State statutory sections defining gross income and excluding gifts therefrom and the regulations designating tips as includible in gross income are the same in all material respects. There is nothing in Article 1 of Chapter 3, Division 2, Sections 350-358 of the Labor Code that conflicts with the Personal Income Tax Law or regulations thereunder, although there is language therein which refers to tips as constituting gifts. The consideration which brings tips within the scope of gross income has no connection whatever with the policy underlying the article, i.e., the prevention of fraud upon the public. Furthermore, when a gratuity is given in return for a service, it is clearly income to the recipient, not a gift.