

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 349

April 26, 1972

WIDOWS DEATH BENEFITS

Syllabus:

Death benefits paid to widows of deceased San Francisco policemen and firemen who died in the line of duty are properly excludable from the widows' gross income.

Advice has been requested regarding the taxability of the death allowance made by the City and County of San Francisco to the widows of deceased firemen and policemen who died in the line of duty. The death allowance is a monthly payment of a given amount dependent upon the decedent's status at the time of death. The death benefits under consideration are paid pursuant to Section 168.1.4 (policemen) and Section 171.1.4 (firemen) of the San Francisco City Charter as Amended in 1968.

Under the California statutory scheme, gross income is very broadly defined so that the death allowance should properly be included in the recipient's gross income unless its exclusion is specifically provided for by law. Section 17138 of the Revenue and Taxation Code contains certain exclusionary provisions. Subsection (a)(1) provides that gross income does not include "Amounts received under workmen's compensation acts as compensation for personal injuries or sickness." Therefore, if any of the death allowance is deemed an amount received under workmen's compensation acts then the payment would be excludable from the widow's income. Note here that where the statutory provisions authorizing the death allowance provides for a reduction in payment of any amount of workmen's compensation award, the allowance is deemed to be in the nature of a workmen's compensation award. I.T. 3917, 48-2 Cum.Bull. 10.

Whether or not a payment is deemed equivalent to workmen's compensation has been the subject of a federal court decision in Riley v. United States, 156 Fed.Supp. 751 (Ct.Cl. 1957). The test enunciated by the court was if the death allowance received when the husband died in the line of duty was the same as it would have been had the husband died of natural causes, then the payment is not deemed equivalent to workmen's compensation.

Applying the test of workmen's compensation equivalency from the Riley case to the death allowance payable under the San Francisco City Charter, we find that in all cases the widow may claim an allowance, where the cause of death is duty connected, which is different from the allowance which the widow may claim where the death is non-duty connected. There are two circumstances under

which the widow may elect to receive the same benefits to which she would have been entitled had the death been non-duty connected. It concluded, however, that where the statute provides for an election which is entirely within the discretion of the widow the duty connected and non-duty connected award should be deemed different and the rule from the Riley case is satisfied.

It is to be noted that the workmen's compensation equivalency test discussed above is the same test employed in Legal Ruling 025.

Based upon the above analysis it is concluded that the death allowance paid pursuant to Section 168.1.4 and Section 171.1.4 of the 1968 Amended San Francisco City Charter should not be included in the gross income of the recipient where the death is duty connected. Because of the result here reached, the applicability of the \$5,000 exclusion contained in California Revenue and Taxation Code Section 17132 is not relevant.