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OPINION	:	No. 80-220
	:	
of	:	<u>March 14, 1980</u>
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SUBJECT: STATE INCOME TAX ON RETIREMENT BENEFITS—Education Code section 22004 does not exempt members of the State Teachers’ Retirement System (STRS) from paying state income tax on their retirement benefits from STRS.

The Honorable David A. Roberri, Senator, Twenty-Third District, requests an opinion on the following question:

Does Education Code section 22004 exempt members of the State Teachers’ Retirement System (STRS) from paying state income tax on their retirement benefits from STRS?

CONCLUSION

Education Code section 22004 does not exempt members of the State Teachers’ Retirement System (STRS) from paying state income tax on their retirement benefits from STRS.

ANALYSIS

Education Code section 22004 provides that:

“The right of a person to a pension, retirement allowance, return of contributions, any optional benefit, or any other right accrued or accruing to any person under this part is exempt from taxation, including any inheritance tax, whether state, county, municipal, or district.”

This provision is part of the State Teachers’ Retirement Law, Education Code section 22000 *et seq.*, denominated the E. Richard Barnes Act, Education Code section 22000.

Statutory provisions identical in language to those contained in Education Code section 22004 may be found in Government Code section 21200.5 (applicable to state employees and the Public Employees Retirement Law) and substantially similar provisions may be found in Government Code section 31452 (applicable to county employees and the County Employees’ Retirement Law of 1937). (See also Rev. & Tax. Code, § 13880.)

Both Government Code section 21200.5 and section 31452 (as it read formerly) have been construed by the courts as not providing an exemption from state income tax¹ despite the language of the two statutes. (*Estate of Simpson* (1954) 43 Cal. 2d 594; *Galloway v. Franchise Tax Bd.* (1973) 31 Cal. App. 3d 428; see also *Weber v. Santa Barbara County* (1940) 15 Cal. 2d 82.)

In *Galloway v. Franchise Tax Bd.*, *supra*, 31 Cal. App. 3d at pages 429–430, the court stated that:

“A statute adopted in 1937 (Stats. 1937, ch. 677, p. 1900, now Gov. Code, § 31452) and derived from a 1919 act (Stats. 1919, ch. 373, p. 782) provided that a pension or retirement allowance under the county employee’s retirement act is ‘exempt from taxation, whether State, county, municipal or district.’ The wife of a longtime county employee contended that death benefits due to her from his retirement fund were exempt from state inheritance tax. The Supreme Court reviewed in detail the history of retirement legislation and of tax exemptions in California (*Estate of Simpson* (1954) 43 Cal. 2d 594). It concluded that the exemption applied only to ad valorem property levies, and not to other taxes. *Simpson* specifically pointed out language which would effectively express a legislative intent to exempt

¹ We are not concerned here with the issue of the taxation of the employee’s retirement contributions. (See generally, Rev. & Tax. Code, §§ 17502.2(a), 17072(f).)

retirement proceeds from all taxes. It quoted (p. 599) a New York statute which had been held to effect exemption from all taxes, including those on inheritance, by use of the phrase, ‘exempt from any tax.’ Holding that it could not construe the words ‘exempt from taxation’ to apply ‘beyond the limits of property taxation,’ our Supreme Court pointed out, obviously as an alternative, that ‘if further extension is deemed appropriate so as to include the state inheritance tax, the act should be so clarified by the Legislature in unmistakably clear language.’ (*Id.*, p. 603.)

“The Legislature, at its next session following *Simpson*, determined to broaden the exemption. But in doing so, it clearly chose the narrower of the two semantic routes suggested by the *Simpson* court. The amendment of section 31452 provided that retirement benefits ‘are exempt from taxation, including any inheritance tax’ (Stats. 1955, ch. 1503, p. 2745). In choosing this limited extension of the exemption, the Legislature rejected the all-inclusive exemption language pointed out in *Simpson* (see *Simpson* at p. 600). It did not exempt retirement benefits ‘from any tax.’

“The parties agree that the 1955 amendment was adopted in the light of *Simpson*. Under the established rule of statutory construction, this choice leaves the law unchanged, except as it extends the exemption to include inheritance tax as well as property taxes (see *Bishop v. City of San Jose*, 1 Cal. 3d 56, 65 and cases there cited).

“The section under which appellants seek exemption here (Gov. Code, § 21200.5) was adopted at the same session which so amended section 31452 (Stats. 1955, ch. 1506, p. 2747) and deals with a like subject matter. Obviously, it is to be construed to effect the same result, legislative satisfaction with this limitation of the exemption was emphasized in the same chapter of the 1955 statutes by application of the identical language to the State Teachers Retirement Law (Ed. Code, § 14278, now § 13807) [now § 22004 of the Reorganized Ed. Code].

“”

“We recognize, of course, that a court cannot make exceptions to a general rule announced by a statute which itself makes no exceptions (e.g., *Ogle v. Heim*, 69 Cal. 2d 7). But that rule has no application here, since *Simpson* makes clear that the exemption is not general, as it would be if it applied to any tax, but is strictly limited.

“The bulk of appellants’ argument turns basically upon their disagreement with *Simpson*. But the Supreme Court has spoken, the Legislature has elected to take only the more limited of the options spelled out by that court, there is no suggestion of excess of authority in that choice, and the issue is foreclosed.

“We hold that, on the present statute, the pension or retirement benefit of a state employee is not exempt from the state income tax.

Thus, the Legislature considered all three statutes since the *Simpson* decision and it made the same choice with respect to each statute, i.e., extending the exemption to include inheritance tax but not to include exemption from state income taxes. (*Galloway v. Franchise Tax Bd.*, *supra*, 31 Cal. App. 3d 428; see also Rev. & Tax. Code, § 13880.) The interpretation of that legislative action by the court in *Galloway* is equally applicable to each of the statutes, there being no significant difference in their language.

Accordingly, we conclude that Education Code section 22004 does not exempt members of the State Teachers’ Retirement System (STRS) from paying state income tax on their retirement benefits from STRS.
