



Kosmal v. Commissioner of Internal Revenue

670 F.2d 842 (1982) | Cited 1 times | Ninth Circuit | March 1, 1982

Before: CHOY and SCHROEDER, Circuit Judges, and HATTER*^{fn}* District Judge.

Per Curiam:

The Kosmals appeal from a Tax Court decision upholding a determination by the Commissioner that the Kosmals' contributions to the Los Angeles County Employee Retirement Association (LACERA) may not be excluded from income. We affirm.

We have previously held that amounts deducted from base pay and deposited with the federal civil service retirement system are not excludable from income. *Cohen v. Commissioner*, 543 F.2d 725 (9th Cir. 1976). We agree with the Tax Court that there is no material distinction between contributions to the federal retirement system and contributions to LACERA and that the latter therefore may not be excluded. See *Feistman v. Commissioner*, 63 T.C. 129 (1974), appeal dismissed, 587 F.2d 941 (9th Cir. 1978).

The Kosmals contends that they have been deprived of due process and equal protection of the laws because some types of private pension plan contributions and other types of government employee benefits may be excluded from income. We do not agree. There are important distinctions in the degree of risk, purpose, and degree of voluntariness of state and local government pension plans versus private pension plans and other types of government employee benefits. The failure to provide for exclusion of federal retirement contributions has been upheld against equal protection and due process attacks. See *Hogan v. United States*, 513 F.2d 170 (6th Cir.), cert. denied, 423 U.S. 836 (1975). Appellants have suggested no valid reason why the result here should differ from that in *Hogan*.

AFFIRMED.

* Honorable Terry J. Hatter, District Judge for the Central District of California, sitting by designation.

