

OPINION NO. 78-065**Syllabus:**

"Pick up" payments made to the State Teachers' Retirement System by an employer on behalf of an employee are not included in adjusted gross income and are accordingly not subject to the Ohio personal income tax.

To: James L. Sublett, Executive Director, State Teachers Retirement System of Ohio, Columbus, Ohio
By: William J. Brown, Attorney General, December 20, 1978

I have before me your request for my opinion in which you ask whether employee contributions to the State Teachers Retirement System (STRS) "picked up" by the employer constitute taxable income to such employees for the purpose of the Ohio income tax.

In 1978 Op. Att'y Gen. No. 78-049, I concluded that "an employer is permitted to 'pick up' part or all of the teacher contributions required to be made to the State Teachers Retirement System pursuant to R.C. 3307.51." However, that opinion did not discuss the effect of such payments upon the employee for the purpose of the Ohio income tax. Therefore, it is necessary to analyze R.C. Chapter 5747, which establishes the Ohio personal income tax.

R.C. 5747.02 imposes the Ohio personal income tax upon individuals based on their adjusted gross income. R.C. 5747.01(A) states that "adjusted gross income" is adjusted gross as defined in the Internal Revenue Code of 1954 (hereinafter "code") with certain modifications irrelevant to this discussion. If "pick up" payments are to be considered adjusted gross income for the purpose of R.C. 5747.02, they must also be includible in adjusted gross income pursuant to the Code.

In Rev. Rul. 77-462, the Internal Revenue Service declared that when an employer-school district assumes and pays required teacher contributions to a pension plan, qualified under §§401 and 501 of the Code, such payment would not be included as income to the employee until distribution of the benefits upon retirement or termination, pursuant to Code §402(a). Because such payments are

not income at the time they are made for the purpose of the federal income tax, they are not includible in an individual's adjusted gross income for the purpose of the Ohio personal income tax. Therefore, I conclude that "pick up" payments made to the State Teachers' Retirement System by an employer on behalf of an employee are not included in adjusted gross income of the employee and are accordingly not subject to the Ohio personal income tax.

Therefore, it is my opinion, and you are so advised, that "pick up" payments made to the State Teachers' Retirement System by an employer on behalf of an employee are not included in adjusted gross income and are accordingly not subject to the Ohio personal income tax.