

this class who happen to remain in service until pension payments fall due. Hence, as a rule it would be impossible or very difficult to fix upon the part of the employer's contribution that should be called income to a particular employee at the time the contribution is made.

The earlier rulings that employer contributions were deductible as ordinary and necessary expenses seem clearly to have rested on a conviction that these were reasonable business expenses similar in many respects to wages and salaries. *There is no evidence that decisions were based on a desire to encourage pension plans.* Apparently no heated contests were involved and to have ruled that such contributions were not ordinary and necessary expenses would perhaps have been interpreted as direct hostility to the provisions of retirement benefits.

The provision of subsection 23(p) of the 1942 Revenue Act, explicitly exempting employer contributions for the first time, was clearly restrictive as compared with earlier rules and regulations, the restriction showing evidence of being designed to minimize tax avoidance.

REASONS FOR TAX-FREE PENSION TRUSTS.—In section 165, which frees employee benefit trustees from taxation, the case for liberality of treatment may seem clearer. Here the government postpones taxes on the income from trust investments until trust funds are distributed and the argument is not available that this income is a necessary expense to the employer similar to compensation. But, *there is good administrative reason for this tax treatment that has nothing to do with liberality.*

The Government could consider a pension trust as a third party, an artificial person, and tax it on the income from its investments. But * * * it is difficult, if not impossible, to isolate the employer contribution with respect to a particular individual. And, even if this is possible, note the complications when pension payments are made if trust fund income is taxed earlier. The pensioner should be taxed on the part of each payment that represents employer contributions, but should not be taxed on the part that represents interest on the trust fund. Bear in mind also that the part of a particular pensioner's payments that arises from interest depends in a complicated manner upon his age, sex, period of service, period the pension has been paid, and the provisions of the plan with respect to payments at death and withdrawal from service. *With these complications in mind, it seems that Congress did well to postpone taxing income of employee-benefit trust funds, quite regardless of any thought of encouraging deferred compensation plans.*

PURPOSES OF 1942 LEGISLATION.—* * * The 1942 legislation doubtless was belated recognition of an immense administrative problem that was bound to arise with a combination of high tax rates and an effort to control compensation payments. It stemmed partly from a determination to minimize tax