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Department of the Treasury

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Date:
November 14, 2000

Legend

Taxpayer =

Township =

Statute =

Dear

This is in reply to a ruling request, dated July 3, 2000, submitted on the Taxpayer's behalf, concerning the federal income tax treatment of payments received as disability retirement.

The Taxpayer, a police officer, was injured in the line of duty. The Township's governing body subsequently approved his retirement from the Township Police Department because of the service connected disability.

Section 706.1 of the Statute provides :

In the event that any member of the [Township] Police Department is permanently disabled from performing police work for the [Township] as a result of a service-connected disability, then the member shall be entitled to a disability pension at any age at seventy-five percent (75%) of average monthly salary offset by any payment for such disability under Workmen's Compensation. This pension shall continue to be paid until a

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determination is made that the member is no longer permanently disabled, or until the member's death, whichever occurs first.

Section 706.2 of the Statute provides that:

Any member of the [Township] Police Department who shall suffer a service connected disability so as to render the member permanently disabled from performing police work for the [Township] may, upon application or on the application of one acting in the member's behalf, or upon application of the Chief of Police, be retired on disability pension if the physician(s) designated by the Board of Supervisors, after a medical and/or psychiatric examination, shall certify to the Board of Supervisors that the member is physically or mentally disabled from performing police work for the [Township], and that said member ought to be retired.

Section 61(a) of the Internal Revenue Code (Code) provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

Section 104(a)(1) of the Code provides, with certain exceptions not relevant in the instant case, that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations provides that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act, or a statute in the nature of a workmen's compensation act, that provides compensation to employees for personal injuries or sickness incurred during employment. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness.

The fact that the amount received as a disability retirement pension is computed with regard to the employee's salary prior to retirement does not disqualify the pension from being in the nature of workmen's compensation. See, Rev. Rul. 85-104, 1985-2 C.B. 52; Rev. Rul. 75-500, 1975-2 C.B. 44; and Rev. Rul. 68-10, 1968-1 C.B. 50.

Sections 706.1 and 706.2 of the Statute limit benefits to police officers who suffer service-connected disability and the benefits are not determined on the basis of age, length of service, or prior contributions. Thus, sections 706.1 and 706.2 are statutes in the nature of workmen's compensation acts.

Accordingly, based on the representations made and authorities cited above, we conclude that amounts received by the Taxpayer under sections 706.1 and 706.2 of the Statute are excludable from his gross income under section 104(a)(1) of the Code.

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Except as specifically ruled above, no opinion is expressed as to the federal income tax consequences of the transaction described under any other section of the Code.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Felix Zech
Assistant Chief, Health & Welfare Branch
Office of Division Counsel/Associate
Chief Counsel
(Tax Exempt & Government Entities)

Enclosure (1)
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