

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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PLR-147934-04

Date:

March 07, 2005

LEGEND

Taxpayer =

Township =

Statute =

Dear :

This is in reply to a ruling request, dated August 27, 2004, 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.

The Statute provides:

If a police officer is permanently disabled from performing police work for the Township as a result of a service-connected disability, then the police officer shall receive a disability pension that is seventy-five percent (75%) of average monthly salary at the time of the determination that the disability is permanent, offset by any payment for such disability under worker's compensation and further offset dollar for dollar by any income earned in excess of seventy-five thousand dollars (\$75,000.00) per year by the disabled officer from other employment subsequent to the commencement of the disability pension benefit. This pension shall continue to be paid until a determination is made that the member is no longer permanently disabled, or until the member's death, whichever occurs first.

The Statute further provides:

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 (the 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 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 payment 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.

The Statute limits 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, the Statute is in the nature of a workmen's compensation act.

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

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,

Harry Beker
Branch Chief, Health and Welfare (Employee
Benefits)
Office of Division Counsel/Associate Chief
Counsel
(Tax Exempt & Government Entities)

cc: