Internal Revenue Service

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Legend

Taxpayer =

State =

Statute A =

Statute B =

Statute C =

Act 1 =

Act 2 =

Dear :

This is in reply to a letter dated December 5, 2007, and subsequent correspondence from your authorized representatives, requesting rulings on behalf of Taxpayer, concerning the federal income tax treatment of certain disability benefits paid pursuant to Statutes A, B and C.

Taxpayer administers the payment of retirement and disability benefits for member police officers and firefighters employed by cities, towns and counties in State. Benefits are also available to qualified survivors of deceased members.

Section 12(g) of Statute A, as amended by Act 2, provides that a member who is receiving disability benefits: (1) under section 13.3(c) of Statute A; or (2) based on a determination that a member is disabled in the line of duty, is entitled to receive a disability benefit for the remainder of the member's life.

Section 12(f) of Statute A, as amended by Act 2, provides that a member who is receiving disability benefits: (1) under section 13.3(d) of Statute A; or (2) based on a determination that a member has a non-work related impairment shall be transferred from disability to regular retirement status when the member becomes fifty-five years of age.

Section 13.3(c) of Statute A, as amended by Act 2, provides that a member: (1) who is disabled after July 1, 2000; (2) who is determined to have a covered impairment that is: (A) the direct result of (i) a personal injury that occurs while the member is on duty; (ii) a personal injury that occurs while the member is off duty and is responding to an offense or a reported offense, in the case of a police officer, or an emergency or reported emergency for which the member is trained, in the case of a firefighter; or (iii) an occupational disease, including a duty related disease arising out of the member's employment; is entitled to receive, during the disability, a minimum benefit equal to the benefit that the member would have received if the member had 20 years of service and was 52 years of age.

Section 13.3(d) of Statute A, as amended by Act 2, provides that a member who becomes disabled after July 1, 2000, and who is determined to have a covered impairment that is not work-related, is entitled to receive, during the disability, a disability benefit equal to the benefit that the member would have received if the member had 20 years of service and was 52 years of age.

Section 13.5(h) of Statute A, as amended by Act 2, provides that upon becoming 52 years of age, a member with a work-related impairment is entitled to receive the greater of the retirement benefit payable to a member with: (1) 20 years of service; or (2) the total years of service and salary, as of the year the member becomes 52 years of age, that the member would have earned if the member had remained in active service until becoming 52 years of age.

In addition, State enacted two provisions to create presumptions that certain diseases or health conditions are incurred in the line of duty. Act 1 added Statute B. Statute B provides, in part, that an employee who: (1) is diagnosed with a certain health condition caused by an exposure risk disease that requires medical treatment and results in total

or partial disability or death; (2) provides verification of the condition; and (3) prior to diagnosis, tested negative for the condition, is presumed to have a disability or death incurred in the line of duty. Section 5(g) of Statute B provides that a presumption of disability or death incurred in the line of duty may be rebutted by competent evidence.

Act 2 added Statue C. Statute C provides, in part, that an employee or former employee who: (1) is diagnosed with an exposure related cancer or exposure related heart or lung disease that requires medical treatment or results in total or partial disability; and (2) at the time of diagnosis is actively employed or terminated employment not more than 60 months earlier, is presumed to have a disability incurred in the line of duty. Section 9(b) of Statute C provides that the presumption may be rebutted by competent evidence.

Section 104(a)(1) of the Internal Revenue Code states that, “Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include--(1) Amounts received under workmen's compensation acts as compensation for personal injuries or sickness… .”

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. 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.

Accordingly, whether benefit payments are excludable by the recipient under section 104(a)(1) of the Code depends upon the nature of the statute under which they are paid, not the particular circumstances of the recipient, and benefits will not be excludable where the statute allows for disability payments for any reason other than on-the-job injuries. See Haar v. Commissioner, 78 T.C. 864 (1982), aff’d., 709 F.2d 1206 (8th Cir. 1983).

Benefits received under a rebuttable presumption that a disability is work-related are excludable from gross income if the statutory presumption does not remove the necessity of demonstrating that the disability is a direct result of employment. Rev. Rul. 85-105, 1985-2 C.B. 53, considered whether amounts received by a disabled firefighter under a state statute that created a rebuttable presumption that the disability was service-connected were excludable from gross income under section 104(a)(1) of the Code. The revenue ruling stated that a rebuttable presumption did not eliminate the

necessity of demonstrating that the disability was work-related but merely shifted the burden of proof concerning the cause of disability to the pension board, which was required to make a finding, based on medical evidence, as to whether the disability was service-connected. The revenue ruling concluded that the statute, which authorized benefits to a class restricted to employees with service-incurred disabilities, was a statute in the nature of a workmen's compensation act. However, if the statute provides that certain diseases are conclusively presumed to be suffered in the line of duty and the presumption eliminates the necessity of demonstrating that the disease is job-related, the income is not excludable. Take v. Commissioner, 82 T.C. 630 (1984), aff'd., 804 F.2d 553 (9th Cir. 1986).

Accordingly, based on the representations made, and authorities cited above, we conclude as follows:

(1) Benefits paid under section 12(g)(1) of Statute A are calculated under section 13.3(c) of Statute A. Under section 13.3(c) of Statute A, a member is entitled to a minimum lifetime duty-related disability benefit equal to the benefit the member would have received if the member had retired at age 52 with 20 years of service, regardless of actual age or number of years of service. Section 12(g)(1) is a statute in the nature of a workmen's compensation act and the benefits paid thereunder are excludable from the member's gross income under section 104(a)(1) of the Code. However, to the extent the benefit exceeds the amount payable based upon age 52 and 20 years of service, the excess is taxable to the member.

(2) Benefits paid under section 12(g)(2) of Statute A are calculated under section 13.5(h) of Statute A. Section 13.5(h) provides that upon reaching age 52, a disabled member's benefit is recalculated as the greater of (1) the retirement benefit payable to a member with 20 years of service and 52 years of age; or (2) the retirement benefit payable to a member with the years of service the disabled member would have attained had the member stayed in active service until age 52. Because the benefits paid under section 12(g)(2) of Statute A are determined by reference to the member's age, length of service or prior contributions, section 12(g)(2) is not a statute in the nature of a workmen's compensation act and benefits paid under section 12(g)(2) of Statute A are not excludable from the member's gross income under section 104(a)(1) of the Code.

(3) Section 12(f) and section 13.3(d) of Statute A, as amended by Act 2, provide benefits to employees who have suffered personal injuries or sickness other than in the course of employment. Accordingly, these provisions do not constitute a statute in the nature of a workmen's compensation act and benefits received under section 12(f) of Statute A are not excludable from the member's gross income under section 104(a)(1) of the Code. Therefore, benefits paid pursuant to section 12(f) will be considered gross income to the member, except to the extent that basis recovery is available.

(4) Statute B and Statute C each establish a rebuttable presumption that certain diseases or health conditions are presumed to have been incurred in the line of duty. The statutory presumptions do not remove the necessity of demonstrating that disability or death resulting from the specified condition is work-related. Accordingly, Statute B and Statute C are statutes in the nature of a workmen's compensation act and amounts received pursuant to these statues are excludable from the member's gross income under section 104(a)(1) of the Code, but only to the extent the amounts are not determined by reference to the member's age, length of service or prior contributions.

No opinion is expressed or implied concerning the tax consequences under any other provision of the Code or regulations other than those specifically stated above.

These rulings are directed only to the Taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely,

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

cc: