



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

I am writing in response to your letters of June 23 and April 21, 2021, in which you asked about the tax treatment of military retirement pay. While I cannot address your particular situation in detail, I am providing the following general information, which I hope will be helpful to you.

Military retirement pay based on age or years of service is taxable income. Conversely, retirement pay received for personal injuries or sickness resulting from active service in the military is excluded from income under section 104(a)(4) of the Internal Revenue Code (Code). A military retiree may apply to the Department of Veterans Affairs (VA) for compensation for service-connected disabilities. However, the VA disability rating does not determine an individual's status for retirement from the United States Armed Forces. Thus, an individual who retires on the basis of years of service fixes the character of the payments he receives as compensation for length of service, rather than as compensation for or on account of disability; hence they are not excludable from income. See *Holt v. Commissioner*, T.C. Memo. 1999-348; *Johnson v. Commissioner*, T.C. Memo. 1977-367.

Section 122 excludes from gross income the amount by which a member or former member of the military reduces his or her retainer or retired pay in order to obtain benefits for his or her survivors under the Survivor Benefit Plan or the Retired Serviceman's Family Protection Plan. Section 122 does not exclude any other amounts from gross income. In other words, section 122 does not apply to a situation in which the uniformed services retiree does not participate in the Survivor Benefit Program.

Rev. Rul. 78-161, 1978-1 C.B. 31 , provides that if a military member retires from the United States Armed Forces based on years of service and is later given a retroactive service-connected disability rating by the VA, the military member's retirement pay for the retroactive period is excluded from income up to the amount of the VA disability benefits he or she would have been entitled to receive. *See also Strickland v. Commissioner*, 540 F.2d 1196 (4th Cir. 1976). Accordingly, IRS Publication 525, *Taxable and Nontaxable Income*, states that the military retiree can claim a refund of any tax paid on the excludable amount (subject to the statute of limitations) by filing an amended return on Form 1040-X for each previous year during the retroactive period. A copy of the official VA determination letter granting the retroactive benefit must be included with each Form 1040-X. The letter must show the amount withheld and the effective date of the benefit.

Section 6511(a) of the Code generally provides that a claim for a tax refund must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. However, section 6511(d)(8) extends the time for veterans to file claims for credit or refund based on retroactive changes to the tax status of their income. This extension allows veterans to file such claims by the end of a one-year period beginning on the date of the determination of disability. The one-year extended period applies to claims for credit or refund filed after June 17, 2008, and does not apply to any tax year that began more than five years before the date of the determination.

Please note that it is only in the year of the VA reassessment of disability percentage (including any impacted retroactive year) that the veteran may need to file amended returns. Under normal circumstances, nontaxable amounts of military retired pay and VA disability compensation are not reported on the Form 1099-R. Thus, military retirees should receive a Form 1099-R each year which shows only the net taxable portion of their military retired pay after the reductions described above have already been made from their gross retired pay. Thus, no amended returns would be required since the amount shown on the Form 1099-R has already been adjusted for any nontaxable awards.

I hope this information is helpful. If you have any questions, please contact me or of my staff at

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
(Employee Benefits, Exempt Organizations and
Employment Taxes)