

CC:EBEO:Br6  
BGoldwyn  
TL-R-448-95

CC-1997-004  
May 5, 1997

ACTION ON DECISION

Subject: Robert E. and Geneva U. Duncan v. United States  
Docket No. 95-338  
U.S. District Ct., E.D. Kentucky

Issue: Whether disability benefits paid to taxpayer from the Policemen and Firefighter's Retirement Fund of the Lexington-Fayette Urban County Government can be excluded from gross income under I.R.C. § 104(a)(1) as benefits paid under a statute in the nature of a workmen's compensation act.

Facts: The taxpayer-husband, a policeman, suffered a heart attack and subsequently retired on total and permanent occupational disability on the basis of angina. His disability retirement was approved by the Board of Trustees of the State Policemen and Firefighter's Retirement Fund. The disability benefits were payable under Kentucky Revised Statutes ("KRS") §§ 67A.360(11) and 79.080(7). KRS § 79.080(7) contains a presumption that a member who has worked with the police department for five years and is unable to perform his duties because of heart or lung disease will be presumed to have contracted the disease while on active duty, if the member was found to be in good health when hired.

Discussion: The Government argued that KRS § 79.080(7), pertaining to heart and lung ailments, created an irrebuttable presumption and, therefore, could not be a statute in the nature of a workmen's compensation act because it eliminated the requirement that the employee's illness be work-related. See Take v. Commissioner, 82 T.C. 630 (1984), aff'd 804 F.2d 553 (9th Cir. 1986); and Green v. Commissioner, T.C. Memo. 1994-264, aff'd 60 F.3d 142 (2d Cir. 1995).

The District Court concluded that the Kentucky statute did not create an irrebuttable presumption that angina was work-related and that, in an appropriate case, Kentucky officials could deny benefits under the statute if it was determined that the condition was unrelated to the claimant's work. The District Court thus concluded that the statute under which taxpayer-husband received benefits was in the nature of a workmen's compensation act.

We believe the District Court's opinion is not an unreasonable reading of existing Kentucky authority. Although there is no case law directly on point, the Kentucky Attorney General had issued an opinion concluding that the presumption of KRS § 79.080(7) is rebuttable. In addition, we understand that Kentucky has a separate disability payment plan for non-work related injuries which provides compensation at a lesser rate than the workmen's compensation statute. See Board of Trustees of Policemen's, etc. v. Brown, 665 S.W.2d 924, 926 (Ky. Ct. App. 1983). This fact gives the employer an economic incentive to challenge the validity of a workmen's compensation claim.

Recommendation: Acquiescence.

/s/

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BRANT GOLDWYN  
Attorney, Branch 6

Reviewers:

Approved: STUART L. BROWN  
Chief Counsel

/s/

By:

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HARRY BEKER  
Chief, Branch 6  
Office of the Associate  
Chief Counsel  
(Employee Benefits and  
Exempt Organizations)

/s/

By:

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SARAH HALL INGRAM  
Associate Chief Counsel  
(Employee Benefits and  
Exempt Organizations)

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