



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

OFFICE OF
CHIEF COUNSEL

May 23, 2002

Number: **INFO 2002-0098**
Release Date: 6/28/2002
Index Number: 2039.00-00

CC:PSI:4:
GENIN-115974-02

Re: _____

Dear _____ :

This letter is in response to your February 19, 2002 correspondence in which you requested general information relating to your Survivor Benefit Plan.

Information submitted indicates that you retired from the United States Navy before January 1, 1984, and you are currently receiving military retired pay. Pursuant to the Survivor Benefit Plan contained in chapter 73 of title 10 of the United States Code, survivor annuity benefits are automatically provided to your spouse, and your retirement pay is automatically reduced accordingly. Therefore, you currently receive reduced retirement pay and on your death, your spouse will become entitled to receive a survivor annuity under the plan.

Because you retired prior to July 18, 1984, the estate taxation of the survivor benefit your spouse will receive is determined under § 2039(c), as that section was in effect prior to repeal in 1984. Under § 2039, prior to repeal, survivor benefits payable under the Survivor Benefit Plan are generally excludable from the gross estate, except to the extent attributable to "deposits" made by the participant/decedent under section 1452(d) of title 10 of the United States Code.

You question whether the reduction in the amount of your retired pay to provide your spouse with a survivor benefit would be considered a "deposit" under 10 U.S.C. § 1452(d), such that a portion of the annuity payable to your spouse will be includible in your gross estate.

The Survivor Benefit Plan is applicable to a person who is married or has a dependent child when he becomes entitled to retired pay. 10 U.S.C. § 1448. Under § 1452(a), the retired pay of person to whom § 1448 applies who has a spouse, is reduced each month by an amount equal to 2.5 percent of the first \$300 of the base amount plus 10 percent of the remainder of the base amount, in order to provide the spouse with a survivor annuity.

<case mis number>

Section 1452(d) of title 10 provides that a person who has elected to participate in the Survivor Benefit Plan who has been awarded retired or retainer pay and is not entitled to that pay for any period, must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period, except when he is called or ordered to active duty for a period of more than 30 days.

Thus the term "deposits" referred to in § 1452(d) are direct remittances made by a retiree during a period of time he or she is ineligible to receive retired pay. The term does not include premium payments that are regularly deducted from the retiree's monthly retirement pay in order to provide the surviving spouse (or dependent children) with a survivor annuity. Rev. Rul. 75-176, 1975-1 C. B. 300 (copy attached), addresses the estate tax treatment of survivor benefits payable under the Survivor Benefit Plan, where the decedent retired before July 18, 1984. In the ruling a decedent participating in the Survivor Benefit Plan receives reduced retired pay in order to provide a survivor annuity to his widow. The ruling concludes that the survivor annuity is not includible in the gross estate because the decedent did not make any deposits within the meaning of § 1452(d).

We hope this general information is helpful. If you have any additional questions please contact _____ of our office. _____ can be reached at (202) 622-3090.

Sincerely,

George Masnik
Chief, Branch 4
Office of Passthroughs and Special
Industries

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