



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

CHIEF COUNSEL

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The Honorable John Shimkus
Member, U.S. House of Representatives
508 West Main St.
Collinsville, IL 62234

Attention: Ms. Dora Rohan

Dear Congressman Shimkus:

This letter is in reply to your inquiry of _____, to the Taxpayer Advocate Office. You wrote about a refund of the taxes your constituent, _____, paid on separation pay he received from the Defense Finance and Accounting Service (DFAS) before the Veterans' Administration (VA) determined that he was entitled to receive disability pay. You asked for information to help _____ and a statement about whether he can obtain a refund of these taxes.

An individual can exclude amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from the active service in the armed forces of any country from gross income, (section 104(a)(4) of the Internal Revenue Code (the Code)). This exclusion applies to an individual if, on application, he would be entitled to receive disability compensation from the VA, (section 104(b)(4) of the Code).

An individual who applies to the VA can exclude that portion of those payments that are equal to maximum amount that he would be entitled to receive from the VA as disability compensation for that period, (section 104(b)(4) of the Code).

A taxpayer, who retired from the Armed Forces for years of service in 1976 and subsequently received a retroactive service-connected disability rating by the VA, is entitled to exclude from gross income that portion of his military retirement pay during the retroactive period that corresponds to the amount attributable to the VA disability rating, (section 104(a)(4) of the Code and Revenue Ruling 78-161, 1978-1 C.B. 31).

A military member who retires from the armed services based on years of service and who later receives a retroactive service-connected disability rating by the VA may claim a refund of any tax paid on his retirement pay up to the amount of VA disability benefits

the military member would have been entitled to receive during the retroactive period. The individual can claim a refund by filing (subject to the statute of limitations), an

amended return on Form 1040X for each previous year during the retroactive period. However, he or she must file a claim for refund of an overpayment of tax within 3 years from the time he or she filed the return or 2 years from the time he or she paid the tax, whichever is later.

I hope this information is helpful. If you have any additional questions or we may assist you further, please contact me at .

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/Employment Tax/
Government Entities)