



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

OFFICE OF
CHIEF COUNSEL

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Dear _____ :

I am responding to your letter to Senator Richard Burr about the taxability of social security disability and workmen's compensation benefits due to personal injuries. Senator Burr asked me to respond directly to you.

Generally, you pay tax on your gross income for the taxable year. Up to 85 percent of the social security benefits the taxpayer receives are included in gross income [section 86 of the Internal Revenue Code (the Code)]. The taxable portion of your social security benefits depends on the amount of the benefit, the amount of other income, and your filing status. The term "social security benefits" includes amounts received for disability due to personal injuries. Thus, you must include the taxable portion of the social security disability benefit you received in gross income.

The Code excludes from gross income amounts received under workmen's compensation acts as compensation for personal injuries [section 104(a)(1) of the Code]. Generally, the amount of the social security benefit is reduced by the amount of the benefit received under a workmen's compensation act. If that is the case, you must include the amount of the workmen's compensation benefit that reduced the social security benefit to calculate gross income under section 86 [section 86(d)(3) of the Code]. Therefore, some portion of the benefits you received under a workmen's compensation act may be included in your gross income as social security benefits.

Essentially, section 86(d)(3) of the Code ensures that a taxpayer receiving only social security benefits and a taxpayer receiving an equivalent amount of combined social security and workmen's compensation benefit are taxed the same. While the social security benefit may be reduced by the amount of workmen's compensation benefits, the amount included in gross income remains the same. Any change to this law requires legislative action.

For your reference, I have attached a recent Tax Court case discussing the interaction between social security benefits, workmen's compensation benefits, and gross income. I hope this information is helpful. Please contact _____ of my staff at _____ for further assistance.

Sincerely,

Janine Cook
Branch Chief, Employment Tax
(Exempt Organizations/ Employment Tax/
Government Entities)
Tax Exempt and Government Entities

cc: