

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:HW
PLR-163718-05

Date:
March 09, 2006

Legend

Fund =

Statute =

Dear :

This is in reply to your letter dated November 3, 2005, requesting a ruling on behalf of the Fund concerning whether certain disability benefits paid under the Statute are excludable from the gross income of recipients under section 104(a)(1) of the Internal Revenue Code (the Code).

The Statute provides that “if any member of the departments of Fire or Police while engaged in the discharge of his or her duties shall receive injuries resulting in such employee becoming disabled from performing duties in the Fire or Police Department, he or she shall be placed on a pension and paid sixty percent (60%) of the member’s Base Salary as computed over the highest three (3) years of Base Salary during the member’s years of active service, regardless of the length of time served.”

Section 61(a) of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

Section 104(a)(1) of the Code provides that gross income does not include amounts received under workmen’s compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen’s compensation act or under a statute in the nature of a workmen’s compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment. Section 1.104-1(b) of the regulations also states that this exclusion does not apply to the amount received either to the extent

that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness, or to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts.

The fact that the amount received as a disability retirement pension is computed with regard to the employee's salary prior to retirement does not disqualify the payment from being in the nature of workmen's compensation. See, Rev. Rul. 85-104, 1985-2 C.B. 52; Rev. Rul. 75-500, 1975-2 C.B. 44; and Rev. Rul. 68-10, 1968-1 C.B. 50.

The Statute limits benefits to employees who suffer service-connected disability. The benefits are not determined on the basis of age, length of service, or prior contributions. Thus, the Statute is a statute in the nature of a workmen's compensation act.

Accordingly, based on the representations made and authorities cited above, we conclude that amounts paid by the Fund under the Statute are excludable from the recipient's gross income under section 104(a)(1) of the Code.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or Statute other than those specifically stated above.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Harry Beker, Chief
Health and Welfare Branch
Office of Division Counsel/Associate Chief
Counsel
(Tax Exempt & Government Entities)