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The Honorable Daniel Lungren
Member, U.S. House of Representatives
2339 Gold Meadow Way, Suite 220
Gold River, CA 95670

Attention:

Dear Congressman Lungren:

This letter is in response to your inquiry dated April 17, 2009, on behalf of your constituent, . asked about Net Disability Tax Exclusion legislation and whether he qualifies to take advantage of this exclusion.

Military personnel, or former military personnel, who make an election under the Retired Serviceman's Family Protection Plan (United States Code Title 10 Section 1431), or the Survivor Benefit Plan (United States Code Title 10 Section 1447) to receive a reduced amount of retirement pay (or retainer pay) to provide annuities for their survivors can exclude from gross income any reduction in retirement or retainer pay resulting from the election (section 122 of the Internal Revenue Code (the Code)). In addition to reductions in retirement pay for survivor benefits, these individuals can exclude from gross income any part of their retirement pay that they receive on account of personal injuries or sickness (section 104(a)(4) of the Code).

The Income Tax Regulations, relating to section 122 of the Code, refer to "net disability exclusion" (NDE) (section 1.122-1 of the Regulations). This section outlines the order of various reductions in gross retired pay when computing net taxable retired pay. As outlined in the Regulations, NDE refers to the sum of

- Excludable retired pay computed under section 104(a)(4) of the Code (amounts received as a pension, annuity or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country) and
- Retired pay, not to exceed the amount of excludable retired pay under 104(a)(4) of the Code, waived to receive V.A. compensation.

The amount of NDE, as well as other calculations described in section 1.122-2(d) of the Regulations, is then used to determine net taxable retired pay.

The calculation described above only applies to individuals who make elections under the Retired Serviceman's Family or the Survivor Benefit Plan.

I hope this information is helpful. If I can assist you further, please contact me or
at .

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
(Exempt Organizations/ Employment Tax/
Government Entities)
(Tax Exempt & Government Entities)